RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

3rd Meeting, 2010 (Session 3)

Wednesday 10 February 2010

The Committee will meet at 10.00 am in Committee Room 1.

1. **Subordinate legislation**: The Committee will consider the following negative instruments—

   - the Snares (Scotland) Order 2010 (SSI 2010/8); and
   - the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2010 (SSI 2010/9).

2. **Crofting Reform (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   - Sir Crispin Agnew;
   - Simon Fraser;
   - Keith Graham, former Principal Clerk to the Scottish Land Court;
   
   and then from—

   - Dr Jean Balfour, Chair, Crofting Group, and Richard Blake, Legal Adviser, Scottish Rural Property and Business Association;
   - Jonathan Hall, Head of Rural Policy, National Farmers' Union Scotland;
   - Marina Dennis, Vice-Chair, Scottish Crofting Federation.

3. **Crofting Reform (Scotland) Bill (in private)**: The Committee will review the evidence heard earlier in the meeting.

4. **Crofting Reform (Scotland) Bill (in private)**: The Committee will consider its approach to the scrutiny of the Bill for the remainder of Stage 1.
The papers for this meeting are as follows—

**Agenda Item 1**

*The Snares (Scotland) Order 2010 (SSI 2010/8)*  RAE/S3/10/3/1

*The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2010 (SSI 2010/9)*  RAE/S3/10/3/2

Extract from Subordinate Legislation Committee's report  RAE/S3/10/3/3

**Agenda Item 2**

SPICe briefing paper (private)  RAE/S3/10/3/4

Written submissions pack  RAE/S3/10/3/5

**Agenda Item 4**

Paper from the Clerk (private)  RAE/S3/10/3/6

**For Information**

Recent Developments  RAE/S3/10/3/7
INSTRUMENTS SUBJECT TO ANNULMENT

The Snares (Scotland) Order 2010 (SSI 2010/8) (Rural Affairs and Environment Committee)

1. The purpose of the Order (as explained in the Executive Note) is to implement commitments given to the Parliament in 2008 by Michael Russell MSP, the then Minister for Environment, on the snaring of animals.

2. The Scottish Government was asked to explain the effect of the apparent drafting error in the first line of article 6, where “having been” is duplicated. Correspondence between the Scottish Government and the Committee is reproduced in the Appendix.

3. The response acknowledges that it is a drafting error. The Scottish Government is not proposing to correct the error by an amendment, on the basis that it does not consider the error shall affect the intended meaning of article 6. Nor does the Government consider it would affect a reader’s ability to understand the provision.

4. The Committee agrees that this is an obvious error. It agrees that it is not likely that this error would affect the operation of the instrument. However, given that the provision specifies circumstances where a fairly serious offence is committed, the Committee considers that a simple and more prudent course of action would be to correct the drafting error by way of a short amendment. This would make the meaning and effect of the provision wholly clear in the authoritative version.

5. It is evident that better quality control would have avoided this type of error. The Government has indicated that it will arrange for printed copies of the instrument to be corrected. The Committee notes however that the typing error remains on the “as made” instrument. Any correction of published copies is a matter for agreement with the Queen’s Printer for Scotland.

6. The Committee reports that there is a drafting error in article 6 of this Order, in respect that the words “having been” are duplicated. The Committee considers that, while this error is not likely to affect the operation of the instrument, the meaning of the provision would be clearer if the provision was to be amended.
APPENDIX

The Snares (Scotland) Order 2010 (SSI 2010/8)

On 26 January 2010 the Scottish Government was asked:
The Scottish Government are asked to explain the effect of the apparent
drafting error in the first line of article 6, where “having been” is duplicated.
Would the Government propose to correct this error by an amendment, given
that this describes the circumstances in which a criminal offence is
committed?

The Scottish Government responds as follows:
The Scottish Government is grateful to the Committee for drawing our
attention to this error.

We consider that this is clearly a typing error but we are satisfied that it will
not have any effect on the meaning of article 6. Nor do we consider that it
would affect a reader's ability to understand the provision.

We are arranging for the printed version to be corrected.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

CROFTING REFORM (SCOTLAND) BILL

WRITTEN SUBMISSIONS

The following submissions have been received by those giving evidence to the Committee:

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Crofting Commission

Status of the Crofting Commission
1. The current Crofters Commission is a tribunal in terms of paragraph 48 of Part II of Schedule 1 of the Tribunal and Inquiries Act 1992 –

“TRIBUNALS UNDER SUPERVISION OF SCOTTISH COMMITTEE
48. The Crofters Commission constituted under section 1 of the Crofters (Scotland) Act 1955 (c. 21).”

It is to be presumed that the intention is that the Crofting Commission will continue to be a tribunal under the 1992 Act, although there is no attempt to amend the name of the Commission in the 1992 Act in the Bill

2. In terms of paragraph 1 of Schedule 1 the Bill the Crofting Commission is to be a body corporate and “is not to be regarded as a servant of the Crown, nor are they to be regarded as having any status, privilege or immunity of the Crown.”

It is anomalous that a corporate body that has nothing to do with the Crown should be a tribunal, where constitutional theory is that all justice emanates from the crown.

3. There is a further anomaly, in that a tribunal ought to be an independent body administering justice as between two competing parties, yet the main role of the Crofting Commission is to regulate crofting and so at many of its hearings or in its decision making processes, it is adjudicating between itself as a regulating body and applicants or objectors, invoking its powers.

It is suggested that serious consideration be given to whether or not the Crofting Commission should continue to be a tribunal or whether it should be viewed only as a regulatory body from whose decisions there is an appeal to the Land Court.

If the Crofting Commission ceases to be a tribunal, then provision should be made in the Act that it is required to give reasons for any decision that it makes – reasons are required in order that an applicant or objector etc can see if there are any reasonable grounds for appealing the decision. At present, in terms of the Tribunals and Inquiries Act 1992 a request has to be made for reasons to be given.

Make up of the Crofting Commission
4. With the Government’s encouragement of community buyouts of estates under
Part II, and crofting community buyouts under Part III, both of the Land Reform (Scotland) Act 2003, it is unfortunate that the Bill does not consider the inter-relationship between community landlords and crofters.

5. In such circumstances, the Committee might consider whether or not the make up of the Commission [see Schedule 1 paragraph 3] should by statute include landlord representatives.

**Appeals from Crofting Commission decisions**

6. The Committee is requested to give serious consideration to changing the appeal procedures in place for appealing against decisions of the Crofting Commission.

7. The 2007 Act introduced a new section 52A to the 1993 Act which provided for appeal from decisions of the Crofting Commission to the Land Court by way of stated case. Section 22 of the Bill is introducing a new section 26K into the 1993 Act which further extends the stated case appeals.

A stated case procedure is cumbersome, time consuming and expensive [because of the additional procedures]. It requires the Commission to draft the Stated Case; all parties who have been involved in the decision making process and this can sometimes be very many objectors in some cases, have to be given an opportunity to suggest revisals to the Stated Case and this may have to involve a further hearing to discuss suggested revisals, before the case can be lodged with the Land Court and further procedure then take place.

By way of example I am currently revising a draft stated case of a decision of the Commission dated 14 May 2009 where there are eight parties involved including the applicant for an apportionment of the common grazings and seven objectors to that application. My suggested revisals will have to be circulated to all the parties and accepted or rejected by the Commission before the matter can go to the Land Court, which is then likely to fix a hearing some months thereafter. Had this been an ordinary appeal to the Land Court, it is likely that a decision would already have been issued.

8. The appeal provisions Paragraph 18 of Schedule 1 to the Civic Government (Scotland) Act 1982 [attached] are a well tried model procedure for appeals from an administrative body. The grounds of appeal are basically the same as are permitted by section 52A under the 1993 Act against a decision of the Crofters Commission. Most appeals under the 1982 Act are dealt with by reference to the Statement of Reasons produced by the administrative body and the argument is almost always whether or not those reasons demonstrate that the body erred. The Crofting Commission are required to provide a Statement of Reasons, if requested, under the Tribunal and Inquiries Act 1992. Such a procedure can be quick and relatively cheap; if a party does not enter the court process then they do not have to be involved in any further procedure, unlike the position in the Stated Case procedure.
9. If the Stated Case procedure is to be retained, I would suggest some minor amendments to sections 52A and the proposed section 26K.

   a. Section 52A(1) & (2) provide that an appeal lies to the Land Court by way of stated case and that it must be brought within 42 days. On one reading this means that if the Commission do not produce a stated case within in time for it to be lodged with the Land Court within 42 days that the right of appeal is lost. Many appellants are therefore "appealing" to the Land Court by lodging some sort of process in the Land Court and asking for a stated case both within 42 days. This is unsatisfactory.

   Normally where there is a stated case procedure the Act will provided that an application has to be made to the decision making body within a time lime and there is then no time limit for making the application to the court, because it depends on when the stated case is produced. Often such Acts also provide that if the decision making body refuse to state a case that an application can be made to a court to order the decision making body to state a case. If the Commission refused to state a case, then that decision will probably have to be challenged by judicial review.

   b. The time limit for appealing by stated case in section 52A is 42 days and the proposed time limited in section 26K is 21 days. It is unsatisfactory to have different time limits for appeals, unless there is good reason, as it leads to potential confusion and loss of appeal rights.

Unlike many statutory rights of appeal with time limits, there is no power for the Land Court to extend time limits on cause shown. It is suggested that such a provision be added as there are hard cases [eg person in hospital] where it might be equitable to allow an extension of time.

**What is a croft**

10. The 2007 Act introduced a new subsection 3(1)(g) to the 1993 Act providing that if a holding had been entered in the Register of Crofts for at least 20 years its status as a croft was unchallengeable. That was a sensible provision.

   However, no converse provision was provided; ie that if land had not been on the Register for 20 years, it could not be claimed to be a croft or croft land thereafter. There are still a number of cases, quite frequently, where someone has owned and occupied land over which there has been no claim that it was a croft or croft land for many many years, but suddenly there is a claim that the land is in fact croft land. This causes hardship to the owner of land, who is suddenly faced with such a claim. Such claims have really only arisen since the right to share in the value of croft land resumed came in 1976 – the claims are seldom made to get the land back into crofting, but are made to force a resumption and thereby generate a payment to the claimant crofter.

   Consideration should be given to providing some mechanism to prescribe to prevent claims that land is croft land, when there has been no such claim for a
long period – 20 years is suggested as this is the normal long prescriptive period under Scots Law. This is particularly so where a Crofting Register is being introduced. It could be provided that once a croft is entered on the Register it would not be competent to claim land outwith the land registered as belonging to the particular croft or common grazings.

The Crofting Register

11. A Crofting Register is to be welcomed. It must be remembered that the Register will not only benefit crofters and landlords, but it will be welcomed by conveyancers in the crofting counties, who should be able to check whether or not land is subject to crofting – provided provision is made to prevent claims as outlined in paragraph 10 above.

Most missives in the crofting counties of non croft land include warranty and indemnity provisions requiring the sellers to warrant that the land is not croft land or subject to crofting and it is difficult to give such warranties where (i) there is no definitive Register and (ii) where it is possible to claim that the land is subject to crofting where for many years no such claim has been made or is apparent.

12. Particular comments on certain provisions:

a. First Registration section (1)(b)(i) on transfer of ownership – this provision may cause administrative difficulties if there are a large number of crofts on the land in question all requiring registration at once. Further if it is the transferee who is to undertake the registration, this may make for difficulties because the new acquirer is unlikely to have the necessary information available. If the transferee is to pay the fees, this will add significantly to the cost of acquisition and this will impact on communities seeking to buy croft land. This would also set up unfairness between crofters benefiting from the transferee paying on the transfer of the estate and the crofter having to pay when the registration takes place in respect of any of the steps mentioned in subsection (3). Further many crofting estates are owned by companies and it is the company that is sold to the new owner, so there is no legal transfer of the ownership of the land, thus exacerbating the unfairness, because it will be a matter of luck for the crofter whether or not the estate is owned individually or by a company.

b. Apportionment - There does not appear to be any provision requiring registration when land is apportioned to a croft from the common grazings either to trigger first registration or where there has been a registration to amend the registration to include the apportionment. Apportionment should probably be added as a step in section 5(2) which requires to be registered.

c. Shares in a common grazing –
i. Section 10 does not require the Keeper to note any share in a common grazing or other grazing right or other right, such as a right to cut peats, that pertains to the croft. In terms of section 3(4) of the 1993 Act such grazing rights, or land apportioned to a crofter from a common grazing or land held
runrig are “deemed to form part of the croft”. It is suggested that as such grazing rights are “part of the croft” that they should be noted in the Title Sheet. They are presently noted in the current Register of Crofts by the Crofters Commission.

The omission in section 10 does not square with the provision in section 18(2) introducing a new section 3ZA(2)(b) which states that “the land which comprises the croft (including any right or land mentioned in section 3(4) is determined by the description of that land in the title sheet” which implies that the grazing rights ought to be in the title sheet, but section 10 does not require it.

ii. Shares in a common grazing or land apportioned from a common grazing can be tenanted or owned separately from a croft. In terms of section 3(5) of the 1993 Act such grazing rights or apportioned land is held separately from a croft the right or lands “shall be deemed to be a croft”. Are these deemed crofts to be registered? This needs to be considered.

d. Ranking section 13 – The purpose of “ranking” given in section 13 is not clear. Does it mean that if a croft is registered it ranks before a subsequent application, so that if the first registration is “wrong” eg as to boundaries that the second ranking has to accept the wrong boundaries as applied in Land Registration, perhaps subject to compensation. This links in with rectification.

e. Rectification section 14 – The definition of “rectify” is not clear by reference to ranking. Does “correcting any inaccuracy” mean any error in the first registration eg as to boundary etc or is that entry to be taken as accurate because it ranks before a second application for registration?

Under section 9(3) of the Land Registration (Scotland) Act 1979 the land register cannot be rectified if the proprietor in possession is prejudiced except in very limited circumstances; eg the error was induced by the carelessness or fraud of the person who registered the land or indemnity was excluded in the original registration. It might be sensible to include a similar provision in relation to rectification of the Crofting Register.

f. Appeals section 17 - it seems anomalous that a challenge to first registration under section 12 is to the Land Court, but appeals under section 17 against any act or omission of the Keeper are appealed to the Lands Tribunal. It is suggested that all appeals in respect of the Register should be either to the Land Court or to the Lands Tribunal so that only one body requires to develop an expertise. An appeal to the Lands Tribunal would be consistent with the appeal provisions in the Land Registration (Scotland) Act 1975.

**Duties of crofters and owner-occupiers**

13. Particular comments on provisions:
a. Section 19D – Division of owner-occupied crofts. Neither this new section, nor any other part of the Bill addresses a common problem, where a crofter buys only part of his croft land. Where a crofter a crofter buys part of his croft that has the effect of extinguishing the lease of the croft over the part that has been bought, but not over the part that has not been bought, which remains subject to the crofting tenancy. When the crofter then assigns his tenancy, he is in fact only assigning part of the original tenancy and that has had the effect of dividing the croft land, because the tenancy of part has been assigned, but the other part remains in the ownership of the crofter or a person to whom the crofter has sold that part.

Section 9 of the 1993 Act does not apply, because that relates only to a prohibition on the crofter dividing his croft tenancy. If an owner occupier is to be prevented from sub-dividing his land ownership without the Commission’s consent, then what I have outlined is a lacuna that needs to be addressed.

b. Section 20(3), new section 5B(6) – this refers to adversely affecting “the interests of the landlord”. As is recognised elsewhere in the Bill [see s.11(3)] the “landlord” is not always the owner, because the tenant under an interposed lease can be the landlord under the definition in section 61(1) of the 1993 Act. I would suggest that this should be amended to adversely affecting “the interests of the owner and of the landlord”.

**“Clawback” provisions on disposal of croft land**

14. Section 25 of the Bill proposes to amend section 14(3) of the 1993 Act by extending the period of five years to ten years, during which a crofter who has purchased his croft is obliged to account to the landlord for part of the resale price when the croft is sold within the specified period – this is referred to as “clawback”. It is designed to allow the landlord to share in any uplift in the price is the land is sold to a developer.

15. However, this amendment does not address the issue arising from the Court of Session decision in *Whitbread v Macdonald* 1992 SC 479, which held that a crofter could arrange for the initial purchase to be taken in that name of a nominee, who was a developer, and that this would avoid the landlord’s right to share in the development value.

a. It is clear from the Hansard Reports of the Scottish Grand Committee consideration of this section in the 1976 Act that this was not the intention of the legislature at the time. In the Scottish Grand Committee’s consideration of Bill for the 1976 Act Mr Buchanan- Smith MP specifically raised the issue of the proper construction of these proposed sections and the Minister, Hugh Brown, said:

“…the Bill has been drafted to impose a liability to a second payment on all crofters who dispose of their land within the five year period to a person outwith their family … I am advised that the drafting of the Bill is perfectly sound in this respect. Under Clause 2(1) we envisage three categories of nominee; a member of the crofter’s family, a building society or similar lending
organisation to whom title is being conveyed as security, and a sub-purchaser who may be a developer or some other person outwith the crofter’s family. In the first two categories of nominee, there is no obligation on the crofter to a second payment …

In the third category, that of the developer or some other person not being a member of the crofter’s family, Clause 3(3) of the Bill imposes a liability on the crofter to make a second payment to the landlord if he disposes of the land forthwith or within five years of acquisition. Disposal forthwith covers a conveyance to a nominee in this category.”

b. At the time of the Whitbread decision, the Court of Session accepted there was an ambiguity in the drafting, but at the time the court could not have regard to any Ministerial statement on the proper meaning of an Act to aid it in its decision making. This has now changed since the House of Lords decision in Pepper v Hart and it is quite possible that if the Court of Session could have had regard to this Committee Report at the time that the decision in Whitbread might have been different.

Sir Crispin Agnew of Lochnaw Bt QC
1 February 2010


Civic Government (Scotland) Act 1982, Schedule 1, paragraph 18
[Licensing Appeals]

18.—
(1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a licensing authority to give him reasons for their decision may appeal to the sheriff against that decision.

(2) A person shall be entitled to appeal under this paragraph only if he has followed all such procedures under this Schedule for stating his case to the licensing authority as have been made available to him.

(3) A licensing authority may be a party to an appeal under this paragraph.

(4) An appeal under this paragraph shall be made by way of summary application and shall be lodged with the sheriff clerk within 28 days from the date of the decision appealed against.

(5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph
(4) above.

(6) For the purposes of an appeal under this paragraph, the sheriff may, in the case of a decision of a licensing authority for which reasons have not been given by the authority under paragraph 17 above, require the authority to give reasons for that decision, and the authority shall comply with such a requirement.

(7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, in arriving at their decision—
(a) erred in law;
(b) based their decision on any incorrect material fact;
(c) acted contrary to natural justice; or
(d) exercised their discretion in an unreasonable manner.

(8) In considering an appeal under this paragraph, the sheriff may hear evidence by or on behalf of any party to the appeal.

(9) On upholding an appeal under this paragraph, the sheriff may—
(a) remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or
(b) reverse or modify the decision of the authority, and on remitting a case under sub-sub-paragraph (a) above, the sheriff may—
(i) specify a date by which the reconsideration by the authority must take place;
(ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act).

(10) In considering an appeal under this paragraph against suspension of a licence the sheriff may, pending his decision on the appeal, order the recall of any order by the licensing authority under paragraph 11(10) above that the suspension be immediate or of any order made by the authority under paragraph 12 above but he shall not do so unless he is satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the appeal and an opportunity of being heard with respect to it have been given to the authority.

(11) The sheriff may include in his decision on an appeal under this paragraph such order as to the expenses of the appeal as he thinks proper.

(12) Any party to an appeal to the sheriff under this paragraph may appeal on a point of law from the sheriff's decision to the Court of Session within 28 days from the date of that decision.

SUBMISSION FROM SIMON FRASER

Crofting Reform Bill Consultation
I refer to your letter of 22 December inviting me to give evidence to the Rural Affairs and Environment Committee.
I am a solicitor in private practice in the Western Isles for the last 28 years. I am an accredited specialist in Crofting Law and am myself a crofter.

I do not intend to go through all the issues as they will all be covered by others, rather I intend to concentrate on those I consider must be addressed.

Part 2: the Crofting Register

I strongly suspect that without the previously proposed ability to grant securities over croft tenancies the proposed new register will be unnecessary. In any event I consider that the proposed new register is far too elaborate and will in practice be almost unworkable. Most crofts have no map-based records for their boundaries. Disputes seldom arise but will in my view be engendered by the registration process. Registration of title on the Land Register is fraught enough in this part of the world, not least due to the OS mapping scale used. The registration of title to a moderate estate can already take over 5 years. If all crofting interests would need to be mapped at the time of transfer of a crofting estate then the process could take a lifetime.

I would recommend that instead the Commission retain and manage the existing register, that it be map-based as it is already becoming, but that a simple dispute resolution process be built in to their registration work. It would help if IACS information was shared with the Commission.

Part 3: Duties

S. 20 (new S. 5B): The vast majority of crofters in my part of the world will fail the test under S. 5B. It is my view that the decline in agricultural activity is in many cases a direct consequence of the vastly increased paper burden on crofters coupled with the withdrawal of headage based support. The new competitive schemes are not accessible to any other than those able to afford to employ consultants and even then many expend money on consultants’ fees only to find that they do not qualify. If the Government seriously wants crofters to engage in agriculture –and deliver on their ‘duties’ then they must target support measures at crofters – and in a way that will enable them to be used. The present bill adds nothing while every change in support payments or in regulation adds more burdens which in turn results in more and more crofters giving up. The carrot has all but disappeared but the stick just gets bigger.

S. 21: As above. However the Commission must use their powers in respect of owner occupiers. The Commission have recently written out to all absentee in that they have a record of. This has given rise to a spate of enquiries from such seeking to buy their crofts in the hope that somehow this step may get by the difficulty. I have to explain that this is not the case. In the past absent owners of bought crofts were not pursued with the same rigour as were absentee tenants and the new emphasis.
S. 22: Whilst understandable I think this is unworkable. It has a whiff of the Indian Reservation about it. I strongly suspect that it will be very much resented and that people will simply refuse to comply.

S 23: As above, the Commission must do their duty. We would not be where we are now had the already existing powers been used. However the Commission’s actions must always be tempered by the reality of the fact that whilst a croft can of course be in the name of only one tenant, it will often be regarded as family property, held by the entered tenant as a ‘trustee’.

Further necessary measures

As a practitioner I come across situations where the existing legislation seems to act as at best an unnecessary barrier, at worst a dangerous (and equally unnecessary) trap for the unwary. Can I recommend that the following issues all of which have a bearing on succession, are considered with a view to their possible inclusion in the final draft Act:

I have long had concerns regarding the law of succession respect of croft tenancies. These concerns have become more focussed since January 2008 when the Crofters Commission took over the administration of such matters. Prior to then the rules as they apparently stand were not applied rigidly and indeed there was a traditional approach generally taken by factors or proprietors which sought where possible to give effect to the deceased’s wishes notwithstanding that this approach may require a generous interpretation of the law from time to time. Part of the difficulty arises from the fact that while crofting succession law is rather more complicated than any other area of the law of succession relating to private property in Scotland, the vast majority of crofters and a considerable number of solicitors are unaware of the law. Many still write their own wills and indeed an unfortunately high number of uninformed solicitors make faulty wills relating to crofts. The pitfalls are many and in my view mostly unnecessary. I give some examples. The section numbers quoted are taken from the 1993 Act as amended:

1. Inadvertant intestacy

Where a crofter bequeaths his tenancy of his croft in his will the bequest itself must be valid. If for instance the bequest is to the effect that he wishes the croft house to go to his wife and the croft to his son that would be deemed to be an invalid bequest. I have seen many other examples over the years.

Acceptance of the bequest must be intimated to the landlord and to the Crofters Commission within four months of death or in the event of unavoidable delay within a further six months [S 10 (2)].

In the event that the bequest is for any reason invalid or in the event of the time limits not being met the tenancy will fall into intestacy ie the succession to the croft tenancy will proceed as if no will had been made.
In the case of any other property (other than an agricultural tenancy) the failure of a bequest for any reason would result in the property the subject of the bequest falling into the residue of the estate and being dealt with in the manner set out in the will for the residue eg “And I leave the whole residue of my estate to my wife….” This seems not only harsh – and unnecessary - but unusually complicated. There is no need for the law to be so obstructive. [S 10 (5)]

I would suggest that the law be amended in two ways:

a. By providing for an over-riding principle – which in reality otherwise runs like a ‘golden thread’ through the law relating to the interpretation of wills – to the effect that wherever possible the intentions of the testator will be given effect to.

b. By removing the provision in S 10 (5) insofar as it would prevent the croft being dealt with as part of the residue of the estate.

2. Intestate Succession

Since the succession provisions of the 2007 came into effect where a crofter leaves no will and his executor seeks to transfer the tenancy to the relevant beneficiary the consent of the Crofters Commission must be obtained in all cases – even in the case of a widow succeeding to her late husband’s croft. The process involves not only the need to make up an application but to intimate it in the local press. Many now find the whole business intrusive, insensitive, oppressive and unnecessary. Previously family successions were intimated to the landlord who noted them and in turn notified the Commission. I would recommend that at least the need for the Commission’s consent to a family succession be removed and replaced with a simple duty to notify the Commission and the landlord.

3. Decrofting by an executor

An executor is often faced with the need to dispose of the deceased’s interest in a croft, the main item of value being the house. Rarely can the croft and house be disposed of as a whole – the buyer unless rich will need a mortgage and in order to obtain a mortgage the house will need to be decrofted, a title taken and the house then sold – very often to the assignee of the croft. However an executor has no right to apply for a decrofting direction – he is not the tenant. Executors often have to resort to the slightly risky device of having themselves entered as tenant, attending to the decrofting, then nominating the title to the buyer and subsequently assigning the croft. Life would be so much easier for all concerned (and there would be no downside to anyone) if an executor were to be accorded the right to apply to decroft just as the crofter could have done were he still alive.

I look forward to meeting the Committee on 10 February.

Simon Fraser
2 February 2010
SUBMISSION FROM THE NATIONAL FARMERS’ UNION SCOTLAND

NFU Scotland’s welcomes the opportunity to provide both written and oral evidence to the Scottish Parliament’s Rural Affairs and Environment Committee at Stage 1 of the Crofting reform (Scotland) Bill, as introduced. With approximately 800 crofting members, NFU Scotland is very well placed to represent views of those actively managing crofts across all of Scotland’s crofting areas.

NFU Scotland welcomed the launch the new Bill and looks forward to helping shape a Bill that truly delivers for active crofters. NFU Scotland believes that the Bill is significantly improved since its publication in draft form in May 2009, but still contains areas of concern. NFU Scotland can only support legislation that will better tackle issues such as absenteeism, misuse and neglect of crofts.

CHANGES TO THE DRAFT BILL

NFU Scotland endorses the significant changes already made to the Bill as a result of the consultation process. These include

- In place of the proposal for Area Committees of the Commission, it is now proposed that six members of the Commission are directly elected to ensure that it consists of a majority of crofters. In order to retain a link with the community, the Bill proposes to retain the Crofting Assessors’ network.

- The policy behind the Crofting Register provisions remain largely unchanged, although significant work has been undertaken to improve the quality of the provisions and to consider how the cost of registering croft land might be reduced. It is now estimated that average cost will reduce from £250 to between £80 and £130.

- There were significant concerns about the proposal to provide crofters with the option of using their tenancy as security for a loan. As a result, this proposal has been dropped from the Bill.

- There has been a significant modification to the proposals to address speculation on croft land. In place of the occupancy requirement, it is proposed that the powers of the Crofters Commission to reject decrofting applications will be strengthened. This would enable the re-named the Crofting Commission to reject an application to decroft where they consider it to be detrimental to the interests of crofting and the wider public benefits associated with crofting, such as landscape and environmental benefits. It will also be possible for them to reject decrofting applications where planning permission has already been granted.

- The Bill also increases the clawback period from proceeds of a subsequent sale of decrofted land to be shared 50:50 between the crofter and the previous landowner from 5 years to 10 years.
The proposals in the draft Bill to define owner-occupier crofters and provide clear duties on the requirement to be resident on or within 16km of the croft and to put the land to productive use remain largely unchanged. The consultation demonstrated that there was support for treating tenant and owner-occupier crofters alike, and in addressing the problems of absenteeism and neglect.

NFU SCOTLAND’S COMMENTS ON PARTS 1-5 OF THE CROFTING REFORM (SCOTLAND) BILL, AS INTRODUCED

The Scottish Government has stated that there is widespread concern that crofting is in decline as a consequence of persistently high levels of absenteeism, growing levels of neglect and the continuing removal and development of land from crofting tenure. That suggests that the existing governance arrangements and regulatory framework may have failed to address this decline.

The stated objectives of Crofting Reform (Scotland) Bill are to put in place a robust regulatory and governance framework for the future of crofting that will reverse this decline and ensure that crofting continues to contribute to sustainable economic growth in some of Scotland’s most remote rural communities.

Given those overarching policy objectives intended to be attained by this piece of proposed legislation, NFU Scotland must make the following comments with regard to the five parts of the Crofting Reform (Scotland) Bill, as introduced.

Part 1 – Reorganisation of the Crofters Commission

Part 1 proposes reforms that are intended to make the Crofters Commission more effective in delivering its core function of regulating crofting. Through changing the constitution of the Commission to allow for directly elected members, the Bill aims to make the Commission more representative of, and accountable to, the people it regulates.

- NFU Scotland is largely indifferent about the change of name to the Crofting Commission. The precise name of the Commission is a minor issue, whereas what the Commission does and how it operates are of major interest.

- NFU Scotland considers that the proposal within the Bill to have six (of the possible nine) commissioners be directly elected by crofters is a major step in the right direction of making the Crofting Commission more accountable. However, while this would be more democratic, the question has to be asked whether this will be sufficient.
NFU Scotland also considers that the other commissioners should also elect the Chair of the Crofting Commission rather than be an appointment of Scottish ministers.

That said, NFU Scotland considers the current proposals in the Bill to be a far better option than the original suggestion of Area Committees.

NFU Scotland also seeks clarification within the Bill on the electoral details in relation to Part 1. NFU Scotland agrees with the notion of the six electoral wards to provide the six elected members of the Commission.

However, the Bill must also ensure that those enabled to vote properly represent active crofting interests and so NFU Scotland suggests that only those tenant or owner-occupier crofters on the Commission’s register of crofters should be eligible to vote.

Part 2 – The Crofting Register

Part 2 of the Bill proposes to create a new Crofting Register that, in effect, would eventually replace the existing Register of Crofts which is now considered to be incomplete and outdated. The Bill gives responsibility for establishing the new register to the Keeper of the Registers of Scotland, who is responsible for maintaining other property registers in Scotland.

The new Register would be map based and would clearly define the extent of, and interests in, a croft and other land held in crofting tenure, such as common grazings. In addition to providing crofters with greater security over their croft, an accurate and current legal register is considered to be important in the effective regulation of crofting.

NFU Scotland is of the opinion that a proper and accurate ‘register’ of croft land is required, but must be fit for purpose and help enable any dispute to be resolved – even through compromise – without unnecessary recourse to legal action.

NFU Scotland considers that current mapping under the Integrated Administration and Control System (IACS), which governs all applications to the Single Farm Payment Scheme, Less Favoured Areas Support Scheme, cross-compliance regulations etc., would not be acceptable as a mapping option as that relates exclusively to land use rather than rights (titles) over land.

NFU Scotland considers that the proposals now contained in the Bill, in relation to costs, when registration would be required and the details of the registration (Section 41), are adequate.

However, mapping and registration could soon become inadequate as significant problems only arise where and when a dispute arises.
• Therefore, NFU Scotland suggests that the Bill should make provisions for an arbitration system to be established to handle dispute cases through a panel so that they can be resolved without necessary recourse to all the current associated costs of legal advice and so permit deliberation by the Scottish Land Court sooner rather than later.

• NFU Scotland would suggest that such an arbitration body could be managed by the new more accountable Crofting Commission.

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Part 3 of the Bill defines ‘owner-occupier crofters’ and puts in place a new process for addressing absenteeism and neglect on croft land. At present, the Commission has a discretionary power to tackle absenteeism and action on neglect is dependent on either a complaint being made or the consent of the landlord being given.

The Bill would place a duty on the Commission to take action in respect of absenteeism and neglect by both tenant and owner-occupier crofters. This should help to ensure that crofting contributes to economic growth by requiring crofters to be resident on or near their croft and to put it to some form of productive use.

• NFU Scotland is firmly of the opinion that neglect is the most significant issue that must be addressed rather than absenteeism per se. However, both absenteeism and neglect together is the worst situation of all.

• The purpose of the Bill in this respect should be to ensure that the Commission can take effective action in order that crofts are actively managed, i.e. tackle the issue if neglect first rather than absenteeism on its own. The primary principle must be one of ensuring active management of crofts rather than determining who should be doing the crofting.

• NFU Scotland is equally convinced that the rules must be the same for an owner-occupier as they are for a tenant. Moreover, a short-term tenant of an owner-occupied croft should be eligible to the same support measures (Crofting Counties Agricultural Grant Scheme, etc.) in order to encourage active management.

• NFU Scotland agrees with the Bill’s proposed duty on a crofter not to misuse or neglect a croft. NFU Scotland also agrees with the more comprehensive definition of ‘misuse’ relating to requirements to cultivate or put to purposeful use and ‘neglect’ relating to breaches of Good Agricultural and Environmental Condition (GAEC).
In trying to tackle absenteeism through the Bill, NFU Scotland believes it would be extremely difficult to justify or unfair to enforce a residency requirement of on or within 16 kilometres (10 miles) of the croft. Any distance measurement would be arbitrary and could not reflect the particular circumstances of a particular case, e.g. where the crofter works away from the croft for a significant amount of the time yet the croft is nevertheless actively managed and certainly is not neglected.

Therefore, NFU Scotland suggests that the distance requirement should be retained within the Bill as a benchmark only, and that the Commission fully utilises the “not ordinarily resident” qualification currently in the Bill to its full extent.

NFU Scotland would then recommend that the Bill enable individual crofters to apply to the Commission as being “not ordinarily resident” in cases where job opportunities or personal circumstances make them resident beyond the 16km threshold.

Part 4 – Further Amendments of the 1993 Act

Part 4 of the Bill makes other changes to the Crofters (Scotland) Act 1993 that are intended to deliver a number of policy goals. Sections 25 to 29 aim to tackle speculation on the development value of croft land through strengthening the grounds under which the Commission may reject an application to decroft. At present, the Commission regards itself as obliged to approve applications to decroft where outline planning consent has been granted.

NFU Scotland supports the provisions of the Bill that would enable the Commission to reject applications to decroft where it considers the cumulative effect of such applications may have a negative impact on crofting in the area, etc.

NFU Scotland considers that the Commission should be able to oppose applications to decroft even in circumstances where planning permission has been granted.

NFU Scotland considers that the Bill should not alter the status quo (i.e. the existing rules) in cases of disposal of croft land, resumption or decrofting, as an extension to 10 years would make very little difference in practice.

Part 5 - General and Miscellaneous Provisions

Part 5 of the Bill includes general provisions concerning matters such as regulations and orders, ancillary provision, minor and consequential amendments and repeals, and crown application. Section 32 includes a power to make modifications of enactments relating to crofting ahead of
proposed consolidation, which will allow for the simplification and clarification of crofting law.

- NFU Scotland considers that efforts to consolidate and simplify crofting legislation are to be supported in principle, but is also wary of any unintended consequences that might transpire as a consequence. Therefore, NFU Scotland urges great caution.

SUBMISSION FROM THE SCOTTISH CROFTING FEDERATION

SCF Evidence to the Rural Affairs and Environment Committee of the Scottish Parliament regarding the Crofting Reform Bill as introduced 09 December 2009

Thank you for the opportunity to comment on the Crofting Reform Bill as introduced to the Scottish Parliament on 09 December 2009. This evidence is in addition to the response the SCF submitted to the draft Crofting Reform Bill consultation, much of which is still relevant. There are many issues that could be raised but for the sake of brevity we focus on our most pressing concerns.

OVERVIEW

Central to our submission is the assertion that crofting is not farming and doesn’t need to be “brought into 21st century mainstream farming”. Crofting is a resilient rural culture that has kept thriving communities in some of the remotest parts of Scotland and which has survived a relentless stream of misguided attempts to demolish or ‘reform’ it. This resilience should be nurtured and this Bill used to enable crofting communities to continue to take care of their own affairs in a manner which has served them well for many generations and is consistent with modern community development.

This Bill, like the last, is teetering on the edge of collapse. We believe this is mainly because it was constructed in a ‘top-down’ manner with little meaningful participation. Government officials involved in this Bill’s drafting did not follow the recommendations for rural development policy set out by the government’s own directives, those of the Carnegie Trust’s Commission for Rural Community Development, and those of the OECD, as regards community development in Scotland.

Whilst the SCF acknowledge that the work of this committee is to scrutinise the provisions particular to the present Bill, we feel that it is important to place this in the wider context of why there has been so much criticism. The continuing failure by government to allow crofters to participate meaningfully in the creation of legislation has led to a great deal of public money, once again, being spent on legislation that falls significantly short of being fit for purpose.
However, having said this, the SCF support the progress of the Bill in principle as we believe that there can be some good recouped if it is amended appropriately and supported by complementary ministerial direction. We urge the parliament to use this opportunity to stipulate amendments that will allow the Bill to truly enact the principles of de-centralisation and community ownership that it claims to promote.

The SCF want this Bill to:

1. Decentralise crofting decision making through the partnership of a majority elected Crofting Commission informed and advised by a locally elected Assessor Network;
2. Create a fit-for-purpose crofting register, through community led development, held and maintained by the Crofting Commission adequately resourced to do this;
3. Be supported by ministerial direction and guidance to Planning Authorities to protect cultivatable croft land and help to address speculation;
4. Be supported by appropriate investment, e.g. a crofting housing grant and loan scheme.

THE BILL

Part 1 Reorganisation of the Crofters Commission

The SCF accept that the Crofters Commission are re-named the Crofting Commission to reflect the change in its function and are content with the Scottish Government assurance that additional costs for the change in name will be minimal.

Part 2 The Crofting Register

The SCF supports having an effective crofting register. Indeed we find it difficult to understand how successive governments believed they could measure the potential impact of legislative or policy change without a reliable database. However, the whole principle of the registration procedure is wrong – there is no participation and it looks designed to be antagonistic and divisive. ‘Trigger points’ and ‘ranking’ will mean every individual having to instigate a potential boundary dispute at possibly great cost (to both the individual, and to the public if Legal Aid is used) with boundaries being established on the principle of ‘deepest pocket wins’. Furthermore, the whole exercise could take generations to complete.

The SCF strongly recommends that the register be completed using participatory methods such as ‘community mapping’ and mediation – which is widely commended by the legal profession to help keep disputes out of the judiciary system. Assessors should be trained to assist in this. This aligns with the HIE Community Led Development model and with ‘asset growth’, an
established approach to rural development. It is anticipated that this methodology could save on public expenditure in the long term and would establish a fit for purpose register under community ownership.

This methodology would also have the advantage of using the many maps that already exist under the process of the Crofting Right to Buy, and clearing up the confusion over crofts that do not appear on the present Crofters Commission register of crofts. We also think that the '20 year rule’ would help to avoid disputes and should be used.

There does not appear to be a strong argument for establishing and holding the register under Registers of Scotland. The Scottish Government have laid out a plan to map the common grazings using specialist staff funded by SG and located in the Crofting Commission. This principle should extend to the whole mapping exercise, aided by the Commission Assessor Network. By the nature of participatory methodology HIE and SCF would also be closely involved. The register should then reside within and be maintained by the Crofting Commission.

The SCF maintains that the cost of setting up and compilation of the register should be met by public investment under the SG duty to map Scotland. Future amendments to the register could be charged for at a rate in line with other public register amendments.

A clause is needed in the Bill to allow a grace period for register amendment under compassionate grounds to help people such as bereaved when they are most vulnerable.

**Part 3 Duties of Crofters and Owner-Occupier Crofters**

**Abenteeism**

To condemn absenteeism whilst simultaneously removing the housing scheme that made it possible to live on the croft is an absurdity. Any absentee initiative should dove-tail with a crofting new entrants scheme, which should incorporate a croft housing grant and loan scheme. Means-testing housing support could be considered in order to extend and target limited resources.

There is a keen interest in taking up croft tenancies but for some reason the Crofters Commission has ceased to hold a record of interested parties. This needs to be re-established and used in conjunction with an absentee initiative and croft new entrants scheme to link suitable (capable) potential tenants with realistic croft activity plans to vacant crofts. A probationary period may be appropriate for croft entrants, with support from the commission and HIE.

16km is too small a distance for the limit of living within a practical distance of a croft. Many people live further than this from their place of work. It would therefore be fair to extend the limit to a distance that is practical to still tend the croft, say 50 Km (under an hour’s car journey).
Dealing with absenteeism should not just be the responsibility of the Crofting Commission. Under the Community Led Development model crofting communities should be able to take action regarding absenteeism, supported by the Crofting Commission, the community being in the position to know whether absenteeism is damaging or not. Prof. Hunter’s suggestion that absentees pay an enhanced registration fee to retain their croft is worthy of consideration, especially if the revenue goes into the local community development fund. However, on balance we believe that freeing up crofts for new entrants is more pressing for restoring vitality to crofting communities.

**Neglect**

We reiterate the assertion that dealing with neglect is more pertinent to the health of crofting than dealing with absenteeism. Crofters may have to be absent from their croft for very good reason but it is fair to expect them to put in place a land management plan. This may well be by giving a sub-let to another crofter who will work the croft in their absence. However, we feel that a sub-let should only be used as a land management tool (not as ‘purposeful use’) and not used to create an ‘under-class’ of crofter with few rights.

The definition of neglect needs to be clarified. Working ‘every inch of the croft’ is unreasonable, but so is the provision of ‘nature conservation’ as an excuse for neglect. Nature conservation croft plans should be under a resourced environmental land management scheme.

The Bill needs provision for ‘force majeure’ or incapacity.

**Part 4 Further Amendments of the 1993 Act**

Extending the period in which a crofter is obliged to give up 50% value of disposal of croft land from 5 to 10 years is acceptable (from croft purchase - not from decrofting, as the Bill states) as an effective deterrent to short-term speculation on croft land. The sale by nominee (Whitbread vs MacDonald) loophole could be closed as individual gain through such means is despicable to the majority of crofters.

However, there seems to be no justification for the development share to go to the landlord who is likely to have made no contribution to the maintenance and working of the land. Rewarding the landlord in such circumstances is, like an interposed lease, against the spirit of land reform. The SCF would rather see the landlord's present 50% 'clawback' become a 'township development contribution' which goes into a local crofting development fund for community projects. This is undoubtedly more congruent with the ethos of land reform and with HIE's plans for crofting community-led development. Whilst we acknowledge that it needs creativity to work in all localities we believe the idea to have merit and be worthy of further consideration.

The SCF welcomes the provision for the Crofting Commission to not give direction to de-croft notwithstanding the existence of planning consent, should it deem that appropriate. This may help in curbing some blatant speculation on croft land. However, we believe that the effective way to protect croft land.
is for ministers to direct Planning Authorities to have a presumption against building on the better quality croft ‘in-bye’. Furthermore, this should not discriminate against crofters; all land capable of growing food should be conserved.

**Part 5 General and Miscellaneous**

No comment

**Schedule 1**

The formation of a majority elected Crofting Commission attempts to carry out the recommendation of the ColoC to bring more self governance to community level. We approve, though the chair should be elected by the Commissioners (as with the Cairngorms National Park board chair). However, this will not suffice. Having failed to win approval of crofting communities with the suggestion of Area Committees the SG has consistently ignored the fact that the decentralisation model already exists in the Assessors Network which represents democracy working at the very roots of the community. This existed (and was effective) for decades until being run-down by the last Commission regime and then revived by the present Commission under pressure by the crofting communities and the SCF.

The design of a ‘modernised’ model for the Assessor Network and Assessor Panel was started and needs to be completed. Core to this is that the power balance must change with the Assessor Panel working in an informing and advisory role to the Crofting Commission. The support staff will only service the network, under direction of the Commission. All assessors should be trained in participatory development and mediation – there being an essential role for mediators. Assessors will be elected by, and be accountable to, their crofting community.

The CC annual plan should be subject to debate in Parliament not just approved by the SG and there doesn’t appear to be provision for a timely procedure of amending the annual plan with inclusion of newly elected commissioners and a parliamentary debate.

**Schedule 2 Minor and Consequential Modifications**

No comment

**Financial Memorandum**

The Scottish Government seem to be unaware of the potential cost implications to crofters in establishing their croft boundaries. There is provision made for legal aid to help crofters establish their boundaries in the Scottish land Court. We contend that investing in participatory mapping and mediation will reduce the need for court action and so has the potential to save on public expenditure. Training mediators also has potential community benefits beyond crofting disputes.
The costs claimed to be incurred by the Crofters Commission for administration procedures is excessive. Presumably this is either because costs not directly associated with the procedure have been included or because the procedure is grossly inefficient. To contemplate allowing the Crofting Commission to charge crofters for administration based on these costs is unacceptable.

Policy Memorandum

Absenteeism is a symptom not a cause – if the policy is based on dealing with absenteeism as a cause of crofting decline it is failing to get to the cause.

ADDITIONAL

A great deal of work is needed on rationalising the use of common grazings. This is too big a subject to go into in this document but it needs noting.

SUBMISSION FROM SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

Written evidence to the Rural Affairs and Environment Committee of The Scottish Parliament from the Scottish Rural Property and Business Association Limited (SRPBA) on the terms of the Crofting Reform (Scotland) Bill.

Introduction
The SRPBA is a membership organisation, uniquely representing the interests of landowners and land managers in Scotland. As such, its membership includes those with crofting interests, including professionals who advise both crofting landlords and crofters. Accordingly, the SRPBA’s interest in submitting these comments is on behalf of members who will be affected by the provisions contained within the Crofting Reform (Scotland) Bill.

General
The SRPBA supports crofting in the crofting counties because of the historical and cultural links which do so much to strengthen remote communities. We believe that the way forward includes better recognition of the contribution of all types of landlords and support for crofters and landlords working together. We have previously suggested that some regulatory decisions could be developed by the Crofting Commission to properly constituted Grazing Committees, where working with landowners, the Crofting Commission acting where required as arbiter.

The Bill as now drafted creates new bureaucracy, fragments the role of the Crofting Commission, restricts family succession to crofts, reduces the role of landowners and generally tinkers with existing legislation. It contributes little to resolving the existing problems identified in the Shucksmith Report and others. The opportunity to start again building on the principles of the 1886 Act has been lost.
Turning now to the details of the Bill:

1 - The Crofting Commission
It is not clear why the name is changed since this will lead to new administrative costs and serves no real purpose.

a) The new Commission will consist of elected and appointed members (9 in all). Details of the election process in the Bill have largely been left to secondary legislation and these should be included in primary legislation. It is assumed that those eligible to vote or stand will be the tenant or owner occupier of a croft as set out in the Commission register, but this and much other important detail must be included in the Bill.

b) The Commission's duty to produce a plan - consultation should include representatives of crofters (SCF) and landowners (SRPBA).

c) Appointed members of the Commission should include a landowner.

d) The SRPBA supports the appointment of chairman by government.

The above require the following changes in the Bill and the 1993 Act:

i) Election Process
Schedule 1 para 7(2) sub paras (a,b,d,e,h and j) should be in primary legislation - sub paras (c, f and g) can be in secondary legislation.

ii) Under S2 (inserting S2C into 1993 Act) in new S2C (3) (c) add 'representatives of crofting landowners and crofters; and' (Duty to produce plan).

iii) In schedule 1 para 4 (i) (a) add new sub para (iii) 'at least one person representing landowners’ interests'.

2. Crofting Register
The SRPBA has supported in principle a map based register of crofts. However, we are concerned at the proposal in the Bill that the sale or bequest of a crofting estate should trigger the registration of all crofts involved. Such a proposal would in addition to the direct costs of registration lead to time delays, administrative costs and the resolution of croft boundary disputes. The costs of all of these would far exceed crofting rental values (see the SRPBA response to the Financial Memorandum). If Government wish to pursue this it is suggested that registration triggered by the transfer of a crofting estate should be restricted as follows:-

(1) to croft in bye land collectively. The same approach could apply to common grazings. However, these are not covered in the Bill; the only reference is in the Explanatory Notes to the Bill. In these it is suggested that Government would be responsible for mapping common grazings by using two surveyors. This does not recognise the need for discussion with crofters
and owners. Costs and time are under calculated. There is no provision for resolution of any disagreements which could arise from the extent of, or shares in the common grazings. Furthermore, common grazing shares are regarded as an integral part of a croft and this is relevant to triggers. Will agreed crofter forestry schemes or agreed mobile phone sites on common grazings when resumption takes place act as triggers and if so how will this affect those crofters with shares in the relevant common grazings? This needs clarifying in primary legislation.

It also appears that a change of a single trustee where a crofting estate is owned by trustees would trigger registration. This is not reasonable and does not reflect requirements for entry in the Register of Sasines or the Land Register. Furthermore, Sasines and the Land Register do not require registration in the case of an estate bequest. It would thus be inconsistent to require registration in the case of bequests. There appears to be a belief in Government that many estates are owned by companies thus avoiding registration on a change in underlying ownership. This is not the case as most estates are not owned by companies.

The SRPBA is concerned that these matters have not been clarified, or delays recognised or costs properly assessed.

The following matters are also relevant:

a) Given our experience of delays in the Crofters Commission S11 (5) should be amended to 'That the period of 6 months beginning with the date on which the Commission issues notification in terms of S11 (1) that it has received the copy of the certificate of registration under S8 (3)'.
b) A right of appeal in terms of S12 of the Bill should apply also to Grazings Committees and the Landlord.
c) S12 sets out ranking arrangements. However the purpose of S13 requires clarification.
d) S17 (Appeals) – It is proposed that the Land Court should be the Appeals Body as it has the experience of boundary disputes in crofting areas.

3 Croft Tenants and Owner Occupiers
The SRPBA notes the concerns about neglect and absenteeism. We take the view that the condition of the croft is the important point. Crofting almost invariably is part-time. Crofters may not live on their crofts or even nearby, depending on employment opportunities. Such crofters may still retain a keen interest in their crofts and have sublet them or made other arrangements. Provided this is so they should not be forced to give up Tenancies and therefore reduce the cultural and historical links in the community.

In S21 of the Bill it is proposed that the new section 21B(3) and (4) should be amended to reflect the position that, if not resident for periods, the crofter should make proper provision for the management of the croft and, if this is demonstrated to the Commission, it should be obliged to give its consent.

4. The following changes are proposed in the Bill.
19B should be amended to take account of owner occupiers as follows - after the word "title" in 19B(i)(b)(ii) add the words "or (iii) was the nominee at the time of the acquisition".

Delete new section 19D as the Commission has existing powers to require letting of an owner/occupier croft whether divided by sale or not. An owner/occupier should not have to seek consent for the sale of part of his ground but should inform the Commission of the sale. The Commission can then decide under existing legislation whether to require the whole or parts of the original croft which have sold to be re-let.

The SRPBA welcomes the extension of the clawback provision from 5-10 years. This provision brings such sales more into line with the generally applicable principle of a 50/50 split in the sale proceeds of joint crofter and landlord assets that apply generally. However, this amendment will have no such effect unless the loophole in the current legislation (which does not reflect the will of Parliament in this respect) exposed in the twenty year old case of Whitbread v. Macdonald is tackled. The legislation does not apply the clawback to a sale by a nominee of the purchasing crofter who is not a family member. This allows the purchasing crofter to nominate for value a speculator who can develop the site and sell without clawback. The SRPBA and, it believes, others think that this loophole should be blocked by making all nominees and anyone deriving from the crofter or nominees subject to the clawback. The introduction of successor owners is necessary particularly in view of the proposed extension of the clawback period. The SRPBA believes that this will be a significant deterrent to speculation. This matter has been raised before.

5. Succession and Assignation
The SRPBA supports family succession (lifetime and bequests) as we recognise that this was a pillar of the 1886 Act and is crucial to maintaining the historical and cultural links in the crofting counties, where some crofter families can trace their occupation back 200 years. We support the view, therefore, that there should be a distinction between family and non family succession. This is the case in the Agricultural Holdings legislation. The SRPBA proposes that Schedule 2 paragraph 7(b) be deleted. Similarly, the proposed repeals covered in Schedule 2(9) and (10) dealing with succession issues should be repealed, thus maintaining the status quo.

6. General
There is a range of small but important matters which should be addressed, as follows:

a) In Schedule 2 para 19 (which refers to section 52A appeals in 1993 Act) where a tenant has been agreed by the landlord for a vacant croft and refused by the Commission, there should be recourse to an appeal procedure. Therefore sub section 5(a) of 52A should be reinstated. It is not clear why this has been omitted as there are appeals for almost every other decision of the Commission.
b) Any notification to any party including those made by the Commission to another party whose interests are potentially affected should be by registered post.

c) The proposed appeal period of 21 days set out in S23 (proposed new section 26K of 1993 Act) should be changed to 42 days to be consistent with other appeals in crofting legislation. The requirement for an appeal by stated case is cumbersome and time consuming.

d) It is proposed in the Bill that the Small Landholders (Scotland) Act 1911 (c49) should be amended so that all such holdings should be regulated by the Crofting Commission. Given that some will not be eligible to become crofts, such holdings should not be regulated by the Crofting Commission until such time as the small landholder’s application for the holding to be designated as a croft has been approved.

Dr Jean Balfour  
Chair, Crofting Group  
SRPBA  
3 February 2010
SUBMISSION FROM WILLIAM J CALDER

I wish to provide comments on the proposed Crofing Bill as follows:-

1. I am glad to see that the complete lunacy of trying to impose a residency condition on croft houses has been deleted from the Bill. At least some sense has prevailed.

2. The other requirement which appears to have been included merely to satisfy a bureaucratic nicety is the need for every crofter to REGISTER their croft land and boundaries. Crofting needs to be freed from stifling legislation, not have more added.

I do not know what the supposed benefits of this are apart from creating lucrative work for surveyors and solicitors along with endless boundary disputes for the Land Court.

The cost to crofters will be considerable and it is difficult to see what practical benefits will result. This is a bureaucratic exercise dreamt up by bureaucrats with no practical value for crofters or their administration.

The present system of croft boundary disputes being settled by the Land Court only if and when in dispute fully meets this requirement in a cost effective way without burdening crofters with unnecessary costs.

It is quite easy to compare the two methods.

Just ask the Land Court how many croft boundary disputes they have been involved in the last (say) five years and what the total Courts costs were for this. Compare this with the total costs of every crofter registering their crofts – no contest I think! I would be glad to hear your results from this exercise which I think you should be obliged to carry out before you implement your proposals – also what you perceive to be the additional benefits from registering the croft land.

You should be aware that many, possibly most, landowners (including my own) have no idea where their croft boundaries are and your proposals are bound to result in disputes arising which would not otherwise do so. On the plus side I cannot see what the benefits are going to be.

William J Calder
18 January 2010
SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

POLICY OBJECTIVES OF THE BILL

There is widespread concern that crofting is in decline as a consequence of persistently high levels of absenteeism, growing levels of neglect and the continuing removal and development of land from crofting tenure. Many have argued that the existing governance arrangements and regulatory framework have failed to address this decline. The objectives of this Bill are to put in place a robust regulatory and governance framework for the future of crofting that will reverse this decline and ensure that crofting continues to contribute to sustainable economic growth in some of Scotland’s most remote rural communities.

Comhairle Response:
Comhairle nan Eilean Siar agree that there has been a marked decline in crofting as described in the policy objective of the Bill. However it is important that alongside robust regulation there must be effective support mechanisms to ensure the future sustainability of crofting.

INDIVIDUAL COMPONENTS OF THE BILL

Part 1
Part 1 proposes reforms that are intended to make the Crofters’ Commission more effective in delivering its core function of regulating crofting. Through changing the constitution of the Commission to allow for directly elected members, the Bill aims to make the Commission more representative of, and accountable to, the people it regulates. It also proposes to give the Commission greater flexibility to develop regulatory policy so that crofting develops in the interests of crofting communities and the wider public interest. Changes are also proposed to the powers of the Commission to bring it into line with more conventional non-departmental public bodies that receive grant-in-aid and have the flexibility to spend their budgets as they see fit.

Comhairle Response:
Comhairle nan Eilean Siar has consistently supported the principal of a directly elected Commission and have had concerns in the past about the ability of the Crofters’ Commission to regulate crofting effectively. Comhairle nan Eilean Siar would suggest that the Chair of the Commission be elected by the commissioners rather than appointed by the Minister, as detailed in our response to the Draft Bill

Part 2
Part 2 of the Bill proposes to create a new Crofting Register which, in effect, will eventually replace the existing Register of Crofts, which is now considered to be incomplete and outdated. The Bill gives responsibility for establishing the new register to the Keeper of the Registers of Scotland, who is responsible for maintaining other property registers in Scotland. The new Register will be map based and will clearly define the extent of, and interests
in, a croft and other land held in crofting tenure, such as common grazings. In addition to providing crofters with greater security over their croft, an accurate and current legal register is considered to be important in the effective regulation of crofting.

Comhairle Response:
It is unfortunate that the costs of the registration are to fall on crofters at a time of economic uncertainty. There are also concerns emanating from the Community Land sector that one of the triggers for registration would be a change of ownership of a crofting estate. In the case of a community buy-out this could act as a disincentive to progress with the buy-out and also burden a newly formed group with an immediate mass registration of crofts on the estate purchased.

In the case of a community buy-out, an extended period of time - or an exemption from being a trigger for registration - should be considered. In the response to the consultation on the Draft Bill Comhairle nan Eilean Siar suggested that the recommendation of the Shucksmith Committee of Inquiry - namely that any boundary uncontested for twenty years should be accepted as the boundary - should be considered again, even at this late stage.

As the Government have agreed to map the Common Grazings at their expense there should be an opportunity to rationalise the process to benefit crofters in their mapping. It should be possible to phase the mapping requirements by township or area to enable community engagement and agreement on boundaries of crofts at the same time as the Government carries out the mapping of the Common Grazings. This can be achieved through common grazings committees. For example; to provide maps and agree boundaries to the standard required by Registers of Scotland in cooperation with agents carrying out mapping for the Government on the Common Grazings. After completion of the maps by the township there should be a period of time after which the boundaries cannot be contested (say 6 months). This approach should save crofters money and also ensure that the register is populated more quickly.

Part 3
Part 3 of the Bill defines “owner-occupier crofters” and puts in place a new process for addressing absenteeism and neglect on croft land. At present, the Commission has a discretionary power to tackle absenteeism and action on neglect is dependent on either a complaint being made or the consent of the landlord being given. The new process places a duty on the Commission to take action in respect of absenteeism and neglect by both tenant and owner-occupier crofters. This will help to ensure that crofting contributes to economic growth by requiring crofters to be resident on, or near, their croft and to put it to some form of productive use.

Comhairle Response:
Comhairle nan Eilean Siar welcomes the clarification of the status of the owner occupier in order to make both owner occupier and tenant the same in terms of absenteeism and neglect. In the response to the Draft Bill Comhairle
nan Eilean Siar recognised the problem posed by absenteeism but felt that an equal effort should be targeted at resident inactive crofters to ensure crofts are indeed put to purposeful use. There are concerns that an over-zealous approach to tackling absenteeism without first doing everything possible to identify and secure local interest in the tenancies being targeted. In too many cases the process involved in tackling absenteeism results in the croft tenancy being advertised and sold to the highest bidder. The process for selection followed by the Commission at present is lax and open to abuse.

The process must be robust and swift to ensure avoidance measures cannot thwart the best intentions of the proposed new Crofting Commission. It may be that the only solution to that problem is that the Commission be given the power to direct an assignation in the case of an absentee rather than be asked to approve the proposal from what is likely to be the highest bidder the absentee being forced to dispose of the croft could find. In the original Crofting Act of 1886 an absentee was not technically a crofter. The rights afforded to crofters were dependant on the crofter being resident on the croft.

Part 4
Part 4 of the Bill makes other changes to the Crofters (Scotland) Act 1993 that are intended to deliver a number of policy goals. Sections 25 - 29 aim to tackle speculation on the development value of croft land through strengthening the grounds under which the Commission may reject an application to decroft. At present, the Commission regards itself as obliged to approve applications to decroft where outline planning consent has been granted.

These provisions enable the Commission to reject applications to decroft where it considers the cumulative effect of such applications to have a negative impact on crofting in the area, the long term sustainability of the crofting community - and the corresponding environmental, cultural and landscape benefits derived from crofting. A change to the requirement for approval for the enlargement of crofts is also included at section 30 of the Bill and section 31 proposes changes to the processes for obtaining Commission consent to make this process simpler and more efficient.

Comhairle Response:
Comhairle nan Eilean Siar supported proposals to tackle speculation and includes reference to locally important agricultural land in the Main Issues report for the next Local Plan for the first time. The Comhairle and other Highlands & Islands authorities met with the Crofters’ Commission to discuss how their new Key Agency Status role will input into the local plan process. The de-crofting issue and relationship to outline planning consents has also been discussed. The new approach should help to align the policies of the Commission, Government and local authority on crofting.

The proposal to increase the clawback period from five to ten years did not appear in the Draft Bill so has not been considered to-date by Comhairle nan Eilean Siar. It is expected that this proposal will have a positive impact to curb speculative de-crofting. A measure further to curb speculative de-crofting
would be legislation aimed at closing the “sale by nominee” loophole. This effectively allows a crofter to exercise his right-to-buy as afforded by the 1976 Act but avoid the clawback clause by selling to a “nominee” who effectively picks up the clawback conditions. If the sale by nominee was only available to members of a crofter’s family to enable house building. This would be highly effective against multiple site speculation and easy to implement – and would also achieve the policy objectives of the Bill.

Part 5
Part 5 of the Bill includes general provisions concerning matters such as regulations, orders, ancillary provision, minor and consequential amendments, repeals, and Crown application. In addition, Section 32 includes a power to make modifications of enactments relating to crofting ahead of proposed consolidation, which allows for the simplification and clarification of crofting law.

Comhairle Response:
There was some reference to charging for regulatory decisions in the Draft Bill. There does not appear to be any reference to this in the Bill as introduced but there is still some concern that regulatory work currently carried out as part of the service provided by the Crofters’ Commission will in future carry a charge. Clarification is required on what the proposals will be either in this Bill or supplementary legislation.

CONCLUSIONS

Comhairle nan Eilean Siar welcomes the fact that the Bill as introduced reflects the position of this authority as outlined in the response to the consultation on the Draft Bill much more closely. However, in the Draft Bill there were proposals titled “Support for Housing” that contained measures to introduce Standard Securities to allow a crofter to borrow against the croft tenancy.

Whilst the fact that those proposals have been dropped is welcomed, it is of some concern that alternative proposals that actually do support crofter-housing are not included in the Bill. In tandem with the Bill that wields the stick through tighter regulation it is essential that a carrot also be offered to sustain crofting in the future.

In addition to an improved Crofter Housing support scheme urgent action is required to introduce a fully funded Young entrant’s scheme. This would support young entrants - hopefully into some of the crofts freed up by tighter regulation outlined. Failure to ensure that the next generation of crofters sourced, at least to some extent, from the crofting areas will be a great loss to the crofting and cultural heritage of the Highlands and Islands. In order to facilitate this injection of young crofters it is of paramount importance to ensure that any absentee action taken avoids the spectacle of those crofts going to the highest bidder with no thought for local resident interest - currently priced out of the croft tenancy market.
Comhairle nan Eilean Siar are concerned that oversight of multiple support measures such as housing, Bull Scheme and CCAGS as well as Crofting Community Support are now fragmented across agencies. There is a danger that this will result in a loss of focus required to ensure the best interests of crofting are always promoted. This was a function of the Crofters Commission and some thought should now be given to ensure the future case for crofting is promoted effectively.

SUBMISSION FROM DR. DAVID FINDLAY

Part 1 – Reorganisation of the Crofters Commission

I agree that the Commission should be required to draw up a plan outlining how it intends to exercise its functions, as set out in Section 2, but the Commission should be under an obligation to consult as widely as possible before publishing any such plan. There should be a period of consultation during which members of the public, and particularly individual crofters, have the opportunity to make contributions to the final plan. Other bodies such as SNH, Forestry Commission Scotland and major crofting landowners (particularly community landlords and community trusts such as the Stornoway Trust and the Applecross Trust and environmental charities with crofting interests such as the John Muir Trust, the RSPB (Scotland) and the Scottish Wildlife Trust) and crofting groups should be consulted. I do not agree that the Crofters Commission should change its name to the Crofting Commission. Generally, however, I do not have many comments on this part of the Bill. The Bill will confer additional discretionary powers on the Commission. It is essential that the Commission develops, through consultation, clear policies as to how it will exercise its discretionary functions, but it is also important that it takes the individual circumstances of every application before it fully into account. Its decision-making process should be transparent.

Part 2 – the Crofting Register

I generally welcome the move towards a map-based Register of Crofts along the lines of the Land Register of Scotland. I would, however, see this as essentially an administrative operation which will have only a marginal impact upon the future viability of crofting. From a practitioner’s perspective, it will create initial difficulties whenever croft land is assigned or conveyed, but over time the Register will provide greater certainty and reduce the scope for boundary disputes. I believe that local communities should be involved in developing township maps showing the boundaries of individual crofts and common grazings and pastures.

I believe that the costs of setting up such a Register should be met out of both public funds and registration fees payable by the individual who is seeking to register the croft land. The costs of registration should be at a reasonable level, at not more than £100 per conveyance or assignation. The level of the registration fees should not act as a disincentive for the transfer of croft land.
There are issues with regard to the sale of crofting estates rather than individual croft tenancies or titles. It is unreasonable, for instance, to expect an incoming community landlord, for instance, to pay a registration fee in respect of every croft on an estate. Such a measure would be both a financial and a practical disincentive to the sale of crofting estates. Not only would the cost be considerable in terms of registration fees, but obtaining the agreement of all tenants and owner-occupiers to croft boundaries would be a formidable practical challenge.

**Part 3 – duties of owners and owner-occupiers**

The perceived problem of absenteeism has received considerable attention since the Bill was published. Absenteeism is a very complicated issue and should be addressed at several levels. There are many reasons why crofters may be absent from their crofts, some of which should be treated sympathetically. There is a difference between a crofter who has been absent for several decades, has not put his or her croft to an agricultural or other purpose (if the croft is capable of sustaining such a purpose) and has no realistic prospect of ever returning to the croft, and a crofter who has to leave his croft to find employment in his or her trade or profession. In my view the provisions of this part of the Bill should be dropped, with the exception of the recognition that croft land may have environmental attributes which arise from the absence, or at least limitation, of cultivation and grazing.

Native woodland and coastal machair are both important ecosystems in the north-west Highlands and Hebrides which can benefit from limited and controlled grazing by cattle. Machair land has been managed by crofting communities for millennia and is an iconic symbol of the non-intensive use of land by such traditional crofting communities, particularly in Tiree and the Outer Hebrides. It is very unlikely that the provisions of this part of the Bill will do anything to encourage such land uses. Its broad brush approach is likely to have the opposite effect as crofters endeavour to put their crofts to some “use”. Encouragement of traditional land uses would require a more subtle approach and targeted support (through grant assistance) for such land uses.

In my view Section 20(2) – and the corresponding part of Section 21 - should be dropped or at least amended so that the word “must” is replaced with “should”. I suggest that these sections must recognise that consideration is to be given to the nature of the croft, in terms of its locality, drainage, accessibility and geological and topographical features. Much croft land is inherently difficult to manage. The term “purposeful use” in Sections 20 and 21 is so vague as to be virtually meaningless.

It is widely acknowledged that crofting was never intended to provide a full-time occupation. With the exception of fertile croft land (particularly in eastern Inverness-shire and Ross-shire), much croft land is suitable only for rough grazing. Absenteeism occurs to the greatest extent in the most remote parts of the Highlands and especially the Islands, where the croft land is generally least productive. In the absence of suitable employment
opportunities and targeted support, isolated communities will become increasingly difficult to sustain.

It is hoped that the Commission will be given guidance to deal with these issues with flexibility and sensitivity. Where croft land is put to use - such as through a formal sub-let or other arrangement - the Commission should be empowered to terminate a croft tenancy only in exceptional circumstances.

I strongly welcome the recognition that croft land need not be put to an active agricultural purpose for it to deliver wider public benefits. Sections 20 and 21 of the Bill recognise that nature conservation will be a recognised land use. This is an important recognition, as there is much croft land which, though unsuitable for anything but the most marginal agricultural activity, is suitable for various conservation and biodiversity projects. Such projects can bring valuable income and employment into remote communities. The unique character of the Scottish Highlands and Islands owes much to its naturally rich biodiversity and range of flora and fauna. Sensitive management of croft land can enhance biodiversity and encourage tourism, which makes a large contribution to the Highland economy.

With regard to Section 23 of the Bill, I do not agree that crofters should be required to provide formal undertakings to the Commission.

I do, however, agree with the proposal that owner-occupiers should be able to grant – with the Commission’s approval – short leases which do not confer on the tenant the right to buy.

**Part 4 – Further Amendments of the 1993 Act**

I do not agree that a case has been made to extend the so-called “clawback” period from five to ten years, as proposed in Section 25 of the Bill. In my view the five year clawback period represents a reasonable balance of the interests of the landlord and estate on the one hand and the individual crofter on the other. From a practitioner’s perspective this is likely to make the purchase of croft land less attractive from a crofter’s point of view.

I agree that there should be greater control over resumption and decrofting of croft land. Where there is an active crofting community, or where there are landscape, cultural and environmental considerations to be considered, decrofting applications should come under much greater scrutiny. I generally welcome Sections 26 and 27 of the Bill, which sets out in greater detail the factors which the Land Court and the Crofters Commission must take into account in determining resumption and decrofting applications respectively.

**Conclusion**

In summary, the best way to preserve croft land and provide a viable future for crofting communities is to exert greater control over resumption and decrofting, so that there is a general presumption against taking land out of crofting tenure with recognised exceptions. Land which can be cultivated
should not be used for decrofted house sites when there is rough common grazing in the same township which can be used for the same purpose. Draconian and often arbitrary action against the perceived problem of absenteeism and lack of purposeful land use – which is more a symptom rather than a cause of the decline of traditional crofting communities – will achieve little and cause considerable resentment amongst crofters. Part 3 of the Bill should be dropped.

SUBMISSION FROM HIGHLAND COUNCIL

1.0 General

Highland Council welcomes the opportunity to comment on the Crofting Reform (Scotland) Bill. The Council has long campaigned for the reform of crofting law and for the sustained contribution that crofting makes to the rural community. The Council would welcome the opportunity to contribute oral evidence if the Rural Affairs and Environment Committee would find that useful.

2.0 Comments on the Bill

Comments are made below by Bill part:

Part 1: Reorganisation of the Crofters Commission

Highland Council welcomes the proposal to have elected representatives on the Commission’s board and is pleased that its concerns over the introduction of Area Committee’s has been listened to. The provisions as set out in this part of the Bill are in line with Highland Council’s submissions to the Shucksmith Inquiry and the consultation on the draft Bill.

The Council is concerned about the mechanisms and cost of running the elections. Would this be the responsibility of Local Authorities? Highland Council would welcome further discussion with Scottish Government on this aspect.

Highland Council agrees that fees for services should only relate to applications in which the applicant is the primary beneficiary. There is a risk that if costs are prohibitive it may act as a barrier to development and activity.

The Council agrees with the change in name to the Crofting Commission and its revised role. The Council would wish to see closer links developed with the Commission in wider Community Planning. This would include the Commission working with HIE in developing crofting initiatives, integration with the Local Authorities Community Planning process, and setting of targets for where crofting contributes to the Single Outcome Agreement.

Part 2: The Crofting Register

The Council is content with the regulatory triggers identified and agrees an accurate and current legal Crofting Register to be a prerequisite for the
effective regulation of crofting. The Council would hope to be able to access the map based register in relation to planning applications.

While recognising the shortcomings involved at present, the Council suggests that it may be worthwhile to begin building the map register from the existing (but improved) IACS system, which itself could be improved to become more comprehensive in coverage. The Council considers IACS a good initial guide to many croft boundaries.

Part 3: Duties of Crofters and Owner Occupiers
Highland Council was opposed to the introduction of occupancy conditions and is pleased that these have been dropped from the Bill. The Council has always been of the opinion that rigorous and consistent regulation should be delivered by a firmer and more pro-active Crofters Commission. The Council agrees with the provisions that enable action to be taken to address absenteeism, neglect and misuse of croft land and believes that if these actions are taken rigorously they should act to restrain speculative development. However, tackling absenteeism, neglect and misuse will be at the direct hand of the Crofting Commission and it is likely that they will need adequate support and resourcing to tackle the issues effectively. Thought should be given as to how other public agencies can support them in this role, possibly through a referral system, or at least through awareness raising. Enabling crofting communities to tackle issues themselves, prior to the Commission having to take action, should save public money and time. The assessors network and grazing committees would provide valuable local input in a pro-active approach and HIE could be particularly instrumental in this regard, so that communities are informed that action will be taken by the Crofting Commission if not resolved by themselves.

Highland Council also welcomes the requirement for owner occupiers to first obtain the consent of the Commission to divide and sell part of the croft. Fragmentation of owner occupied croft land for sale and development has long been used as a vehicle for speculative development. The new provisions will help gain greater control over this practice.

The Council is very supportive of the aim of the proposals. Land use is a major issue in the Highland area and the concerns regarding land abandonment and the impact on fragile rural communities has been reported in recent Government consultations on CAP Reform and LFASS. The challenge will be in defining purposeful or productive use and the Council would envisage a partnership approach involving the Crofting Commission, HIE, and the local authorities to determine acceptable practice in a particular area or township. New procedures and partnership working could be developed in line with those being considered for decrofting/planning applications (see below).

Part 4: Further amendments – notably decrofting
Highland Council is actively working with the Crofters Commission to improve planning and decrofting processes. The Crofters Commission recently
became a statutory consultee for local authority strategic development plans which brings positive involvement at an early stage in the planning process. The Commission is now to have provision to consider wider community interests in the decrofting process, which brings decrofting closer to planning procedures. We intend to investigate with the Commission where there is likely to be duplication in process and how we can productively work together to ensure that planning and decrofting considerations are not seen to duplicate procedures for applicants, or work in opposition. At present, crofters tend to submit their planning application prior to a decrofting application and we are considering if this is now most appropriate. There is clearly further progress to be made, which will involve further liaison between local authorities and the Commission. The Bill appears to be clear in its intent – procedures need to ensure the intent remains.

The Highland Council is also aware of the current lack of momentum in community land buyouts to engender new croft creation, despite there being willing sellers (notably Forestry Commission (Scotland), and very eager community buyers particularly those with aspirations to create woodland crofts for their local young people. The Highland Council also notes with regret the inability or unwillingness of the BIG Lottery Committee to fund such projects despite Government encouragement to do so. The concept of new bare land no-right-to-buy crofts has also not been fully explored in terms of enhanced support for housing under the CHGS for new tenants.

Highland Council
January 2010

SUBMISSION FROM HIGHLANDS AND ISLANDS ENTERPRISE

Crofting Reform (Scotland) Bill

HIE welcomes the opportunity to submit written comments on the Crofting Reform (Scotland) Bill to the Rural Affairs and Environment Committee. In introducing our comments, HIE would fully endorse the 5 key principles for crofting set out in the Government’s response to the Committee of Inquiry into Crofting (COIC):

1. Maintaining and increasing the area of land held in crofting tenure.
2. Ensuring that land held in crofting tenure is put to productive use.
3. Ensuring that housing in the crofting counties makes a full contribution to the local economy.
4. Giving more power to local people to determine their own futures.
5. Assisting young people and new entrants into crofting.
HIE believes crofting delivers benefits to Scottish society through helping to retain and grow population in remote communities and through active land management for economic, environmental and social purposes. We acknowledge that economic returns from agricultural production on crofts are often unlikely to provide full time employment, but can contribute substantially to successful occupational pluralism, and to sustaining individual livelihoods and rural communities.

**HIE’s role in crofting**

In response to one of the recommendations of the Shucksmith report, the Scottish Government separated the development and regulatory functions undertaken by the Crofting Commission and transferred the former to HIE. It is important to stress that HIE’s focus is on crofting community development and not support to individual crofters. HIE is encouraging crofting community development by integrating it into its programme for whole community development in its fragile areas. This approach involves assisting communities to evaluate their local assets, identify their needs, create local plans for growth and development and engage with public agencies through the Community Planning process. Crofting is a key component in many of these communities and local community plans will incorporate initiatives and ideas for crofting development. This will address issues such as housing, absenteeism, use of croft land, crofting infrastructure and will help inform the new Crofting Commission's regulatory work.

In addition, HIE is supporting crofting sector development, through one to many initiatives such as capacity building, networking events, the SCF’s Crofting Resource Programme, which includes work with producer groups and on crofting community plans, and the Soil Association’s Crofting Connections project, linking to the curriculum for excellence introducing school children to crofting culture. HIE is also funding selected research on topics such as bull hire options, and trends on common grazings, which we hope will illuminate the carbon sequestration potential and offer strategies for their sustainable use. We are also actively responding to consultations of particular relevance to crofting.

At the same time, HIE, as the area’s economic and community development agency, is undertaking a wide range of other activities which tackle economic and social disadvantage and which complement our crofting development efforts, namely:

- Developing digital connectivity throughout the whole region.
- Enhancing the university sector, including the University of the Highlands & Islands.
- Building capacity in remote communities through support for businesses with growth potential, community account management and our Growth at the Edge/Fas aig an Oir approach, as outlined above.
• Exploiting the region’s unique renewable energy potential.
• Legacy delivery, until 2012, of the Croft Entrant Scheme.
• Undertaking research and information sharing on carbon capture, trading and management and its importance for crofting.
• Assisting communities to acquire and manage land and other property assets.

**Specific comments on the Crofting Reform (Scotland) Bill, as introduced**

**Part 1 – Governance**

The Bill enables the introduction of a largely elected Commission and the option for area committees, which HIE supported, has been dropped. However it is important that regional variations and working practices are accommodated within the new Commission. The assessors’ network has the potential to be a valuable tool for enhanced regulation, and for ensuring that decisions are appropriate at the local level. The new Crofting Commission should invest in developing assessor skills, transparency of arrangements, improved local accountability and knowledge of changes in crofting law. This can be valuable in ensuring that crofting decisions will contribute to wider community benefit and be integrated into community planning objectives.

**Part 2 - Crofting Register**

HIE remains very supportive of the work to develop the new register. Indeed, the establishment of the register as quickly as possible is a prerequisite for delivery of many of the Bill’s objectives.

For example, the need to map and record all areas is a pre-requisite to applying to use Part 3 of the Land Reform Act. The task can be onerous, and an obstacle to the full implementation of the Land Reform legislation.

HIE believes that as part of its community account management programme, described above, or where a community owns a crofting estate, mapping of crofting areas could be undertaken by communities themselves. In its submission in response to the Draft Bill consultation, HIE suggested that there should be no registration fee, but, we recognise that this is not reflected in the Bill as presented to parliament. Notwithstanding, where there is a collective effort to map crofting areas, HIE suggest that registration fees should be waived. In addition, the actual mapping work could be funded through the Scotland Rural Development Programme (SRDP) under Rural Priorities.

Such a proactive, participatory and inclusive approach to local mapping, using established standards for community engagement, will deliver a cost effective, quick and robust register, facilitating further development and opportunity.
Part 3 – Crofters’ Duties

Strengthening of the Crofting Commission’s discretionary powers in relation to absentees is welcomed. Particularly important, is the Crofting Commission’s power to let an owner-occupied croft in breach of conditions, where the owner’s proposals are either not forthcoming, or not being realised.

HIE welcomes the Bill’s intention to deliver robust regulation on known absentee cases. In addition, HIE suggests that as the work of the Crofting Commission is strengthened, action is taken to identify crofts where abandonment and neglect are obvious, and address the neglect. This twin track approach will hopefully avoid the lengthy delays in addressing absenteeism, because neglect and misuse can be as corrosive in a community as absenteeism.

In granting new powers to the Crofting Commission, HIE recognises that the ethos of the Bill is very much towards establishment of a working relationship between anyone in breach of conditions and Commission staff. In pursuing the objectives listed in Section 26 of the Bill, defined time limits should be introduced for the Commission to settle issues related to residency, misuse or neglect and general undertakings.

HIE welcomes the new definition of an owner-occupier and believes this will equalise the treatment of owner-occupiers and tenants in law. In addition, the enhanced powers conferred on the Commission to deal with un-notified sub division and onward sale should lead to better working arrangements between the Crofting Commission and Local Authorities, particularly in relation to planning law.

Part 4 - Other Amendments

HIE welcomes the intent to strengthen the Crofting Commission’s powers in protecting the spirit of the crofting Acts, especially in relation to the circumvention of crofting law by using planning law as a precedent.

Also welcomed is the intention to make it possible for the Crofting Commission to introduce conditions to its approval of any activity. This work is intended to simplify the Act. An outcome from this work could be the enhanced development potential and work of HIE in partnership with the Crofting Commission where any applicant will be aware that the conditions are mandatory and not guidelines.

Of particular note is the intention to deliver powers to both the Crofting Commission and the Scottish Land Court irrespective of planning precedent and hence make decisions based on crofting values set alongside community aspiration. This should assist Local Authorities to assess the importance of the public benefits of crofting in any particular area, and be complementary to planning law.
Part 5- General Issues

HIE welcomes the intent by Scottish Government to consolidate crofting law in the next Parliament. The ability within the Bill to make amendments by order is welcomed and HIE is ready to assist Ministers wherever possible.

The responsibility for small holdings mentioned in the Bill is welcomed and extends and ratifies the Crofting Commissions powers outwith the current crofting counties. HIE supports this policy arrangement.

Closing comment

Referring to the Scottish Government’s stated objectives following the COIC, it is noted that no reference is made within this Bill to the issues of support for crofter housing and young entrants to crofting. If, as expected, crofts become available via the current absentee initiative, then thought needs to be given as to how a young person can be assisted to enter crofting. Through account management with communities, HIE is offering assistance to communities who want to see crofts used. This will mainly be delivered by the local planning strategies mentioned above in relation to the Croft Register. In terms of funding new entrants, there is a requirement for a structured business approach tailored to their needs in order to release the potential of the new entrant and their community. HIE believes this should be achieved through alignment of SRDP development support.

Crofter housing development is an important part of local micro economic activity. Assistance with crofter housing has two benefits. Firstly, it gets people living as well as working in the crofting community; and second, the actual building of houses has local economic impact. HIE believes that the current grant mechanism does not always focus on the primary target applicant, namely, economically active younger families, on average earnings, in housing need and rooted in their community. HIE also believes that consideration should be given to bringing forward proposals to strengthen and modernise the application of this extremely useful and universally valued support.

It is believed that the Scottish Government wishes to return to consolidate crofting legislation in the next parliament and HIE would take this opportunity to again state the importance of assistance to young entrants in both financial terms and the availability of crofts.

HIE remains committed to assisting Scottish Government achieve the Bill’s objectives and is willing to assist in any way throughout the Bill’s passage.

Highlands and Islands Enterprise
February 2010
SUBMISSION FROM BRIAN INKSTER

Views on the Crofting Reform (Scotland) Bill [as introduced] for The Scottish Parliament’s Rural Affairs and Environment Committee

I will provide my views with reference to the Parts or specific sections of the Bill.

PART 1 – Reorganisation of the Crofters Commission
No Comment.

PART 2 – The Crofting Register
Section 4(b)(i)
Consideration should be given to the burden and cost this provision will put on certain individuals in certain circumstances. For example, if ownership of a Crofting Estate with 100 tenanted crofts on it is being transferred then as part of that conveyancing transaction 100 crofts are going to have to be mapped and registered. It will be a matter of contract between the purchaser and seller as to how this is to be achieved and who will pay for it even if Registers of Scotland expect the purchaser to pay the registration dues. However, it is to be expected that such a burden will be passed to the seller especially insofar as mapping is concerned. This could make the sale of a crofting estate a prohibitively expensive proposition and one that will be very drawn out and neither attractive to the seller or the purchaser. Likewise “whether or not for valuable consideration” means that on the death of an owner of a Crofting Estate, with say 100 tenanted crofts on it, then a transfer to an heir will trigger registration of those 100 crofts at substantial cost, time and trouble to the executry. It does not seem equitable that in such cases the burden of registration of a large number of crofts should fall on one individual in effect meaning that the crofting tenants will not have to deal with registration themselves. In my view section 4(b)(i) should therefore be limited to transfers for valuable consideration only of land on which owner/occupied crofts are situated. If Parliament is insistent on this including tenanted crofts then it should be limited to land on which not more than, say, 5 tenanted crofts are situated.

Section 4(g)(i)
If an entire croft is being resumed why would there need to be a requirement to create a Register entry for land that will no longer be a croft? The words “the croft or” should be deleted. There is, however, also an argument that resumption in any circumstances should not trigger registration. Resumption relates to land taken out of crofting tenure. Why should the removal of an area of land from crofting result in the remainder of the croft being registered?

Comment on First Registration by anyone other than the crofter
The issues that I have already highlighted in respect of sections 4(b)(i) and 4(g)(i) give rise to a general comment: Should registration ever be effected by a transaction that does not directly involve a crofter?
In the case of a transfer of tenanted land by a landlord or resumption by the landlord any registration would not directly involve the crofter. The landlord would be deciding where the croft boundaries were for registration purposes without necessarily having to consult the crofter. Whilst ultimately the crofter would have a right of appeal under section 12 would it not be better for the crofter, who should know the croft boundaries better than anyone, to actually be involved in the registration process? If a crofter is not to be so involved in certain circumstances should those circumstances actually be allowed to give rise to registration?

**What is missing from Section 4(3)?**

An obvious trigger point to consider would be the grant of an Apportionment under section 52(4) of the Crofters (Scotland) Act 1993 where any land comprising any part of a common grazing has been apportioned for the exclusive use of a crofter. That process involves the land in question being mapped in any event making it ideal for entry in the Crofting Register. In any event, surely, you would want a record of apportionments to appear in the Crofting Register? Indeed the Crofters Commission will hold maps of all apportionments already granted. Could these historical apportionments not simply be transferred to the Crofting Register as part of the proposed mapping of common grazings (it was mentioned at the Future of Crofting Conference in Stornoway on 26 January 2010 that the Scottish Government will pay for the mapping of all common grazings and shareholders interests in it and I assume that the Bill will be amended to reflect this). After all any apportionments will need to be identified in order to determine what the boundaries are of the common grazings remaining.

The Consultation Paper (published in March 2005) on the then Draft Crofting Reform (Scotland) Bill under the heading “Deemed Crofts” stated:-

“The current legislation provides at section 3(4) and (5) of the 1993 Act that tenanted rights in a common grazing, runrig land and apportionment which are not part of a croft (i.e. they are tenanted separately), should be deemed to be a croft. This wording has allowed confusion as to whether the deemed croft should be entered in the Register of Crofts, thus giving the tenant all the associated rights and duties of a crofter under the current Act.”

The Consultation Paper went on to say:-

“Section 7 of the draft Bill therefore makes new provisions for recording details of such land or rights in the Register of Crofts.”

Section 7 of the draft Bill introduced amendments to section 41 of the 1993 Act. However, I have been unable to see where exactly, either in the Bill as a consultation draft, as introduced, amended or passed the position was actually covered. This point should now be addressed and dealt with once and for all in the latest Draft Crofting Reform (Scotland) Bill.
Section 4(3)(i)
The making of an application for consent to the subletting of a croft under section 27(2) of the 1993 Act should also trigger first registration.

Section 4 - Make first registration compulsory for all crofters?
Why not radically alter section 4 and set out to achieve a full, complete and authoritative Crofting Register within say 5 years (maybe 10 years) with a system of compulsory registration based on returns to be submitted by each party holding a crofting interest?

Section 5 - Registration of events affecting registered crofts
Section 5(2)(k)
The granting of consent to the subletting of a croft under section 27(2) of the 1993 Act should also be registered.

Section 6 – Application for Registration
Section 6(2)(c) states that an application for first registration should be submitted ‘at the same time as’ a step mentioned in section 4(3) is taken. However, section 6(3)(b) states that an application for registration in respect of an event affecting a registered croft is to be submitted ‘as soon as reasonably practicable after’ a step mentioned in section 5(2). I assume that the reason for this is to ensure first registration whether or not an application that induces it is actually granted whereas a subsequent registration is only going to happen if the event in question actually happens. However, rather than create a two stage process for the latter would it not make more sense for any application made to the Crofting Commission under section 5(2) to include an application for registration in the Crofting Register in the event of the ‘step’ in question being taken? Any registration fee involved could be paid up front and refunded if the application is not granted. The benefit of this would be to facilitate registration of the event promptly after it happens and avoid the possibility of a delay in or non registration of an event which should be registered. It would cut down the administration involved for both the Crofting Commission and the crofter applicant.

Section 6(6)(b)
Whilst a practical matter and not one that needs specification in the Bill it is hoped that the Crofting Commission and Registers of Scotland will work together to ensure that payment of any applications submitted by solicitors can be dealt with via the Registers of Scotland existing FAS system and by direct debit.

Section 6(8)
Surely ownership is transferred for the purposes of subsections (2)(b) and (3)(a) on registration of the transfer in the Land Register of Scotland or General Register of Sasines (which could still happen in the case of a transfer that is not for valuable consideration of land that has not yet been registered in the Land Register)? Is it not simply a case of stating this obvious fact rather than leaving it for the Scottish Ministers to make provision by regulations? The position would, in any event, require to be made clear as soon as Part 2 comes into force.
Section 7 – Acceptance of applications for registration
Section 7(3)
The Keeper should be obliged to acknowledge receipt of an application for registration in the Crofting Register in the same way as the Keeper currently issues acknowledgements of receipt of applications for registration in the Land Register or General Register of Sasines. Such acknowledgements should, I consider, be issued by the Keeper to both the Crofting Commission and also to the actual applicant.

Section 8 – Completion of registration
No Comment

Section 9 – Completion of registration: further provision on first registration
Section 9(2)(a)
The word “the” should be inserted before the word “croft”.

10 – The title sheet
It is suggested that where a croft is registered in the Crofting Register and title to the croft in question is also registered in the Land Register then there should be a cross entry made in each register i.e. a note should be added to each title sheet to the effect that information concerning the subjects is also available from the other register. This would provide a connection between the two registers and be very useful for solicitors dealing with transactions involving the transfer of title to land that is subject to crofting tenure.

Section 10(2)(b)
The name and designation of any sub-tenant of the croft and any tenant under a short lease of the croft should be entered by the Keeper on the title sheet. Reference is made to the owner-occupier crofter of the croft and to the landlord of the croft and to the owner of the croft. An owner-occupier crofter will also be the owner of the croft but not a landlord. A landlord of the croft will also be the owner of the croft but not the owner-occupier of the croft. Why therefore is there a need to specify “owner of the croft” in addition to the owner-occupier crofter of the croft and the landlord of the croft?

11 – Challenge to first registration
Section 11(3)
I would make the same comment about the need for reference to “the owner of the croft” as I did above in respect of section 10(2)(b). This would also apply to reference to “the owner of any adjacent croft”.
How will the Commission know who has an interest in any adjacent croft given that the existing Register of Crofts is not map based? Will the applicant be required to identify the parties upon whom notification will require to be given under section 11(3) in their application made under section 6 (rather like an application for Planning Permission)?

Section 11(6)(a)
Should the form of advertisement not be ‘prescribed’ in the same manner as the notice referred to in section 11(6)(b) is to be prescribed? From a practical
point of view I assume that the Keeper should enclose the ‘prescribed’ form along with the certificate. Indeed should this not be added into section 8(2)(b) as a requirement on the part of the Keeper? Is the placing of the advert/notice to be monitored to ensure compliance? In this electronic age should such notices also be published by Registers of Scotland and/or the Crofting Commission via the internet?

Sections 12, 13, 14, 15, 16, 17, 18 & 19
No comment

PART 3 – Duties of Crofters and Owner-Occupier Crofters
Section 20(1)
Is the requirement for a crofter to be ordinarily resident on, or within 16km of, their croft relevant in today’s world? At the Future of Crofting Conference Drew Ratter (Convener of the Crofters Commission) referred to this as “a horse and cart distance”. Murdo MacLennan (Area Commissioner of the Crofters Commission for the Western Isles) told the Conference that he personally travels 105 miles to work a croft in Harris. Patrick Krause (Chief Executive of the Scottish Crofting Federation) thought that 16km was completely outdated: It should be how far someone could reasonably be expected to commute to and from their place of work in a day. Perhaps 30 to 50 miles he wondered. I share these views.

Section 21 (New Section 19C(2)(a) to the 1993 Act)
The same comments on residency of tenants as expressed above in relation to Section 20(1) applies equally to owner-occupiers.

Section 22 (New Section 21B(5) to the 1993 Act)
The landlord should be allowed the opportunity to provide comments on the application to the Crofting Commission within a set period. This in turn would perhaps result in the 28 day period having to be extended. There may be instances where the Commission require further information from the applicant or from a local office or Area Commissioner. Again, perhaps the period of 28 days should be extended to take account of this possibility. It could possibly be a 28 day representation period followed by a 14 day decision period as is the case with the proposed new section 26B of the 1993 Act.

Section 23 (New Section 26E(d) & (e) to the 1993 Act)
The Commission cannot take action under the proposed new sections 26H or 26J to the 1993 Act if they have consented to a sublet of a croft or to a short lease of an owner-occupied croft. What if the sub-tenant or the tenant under a short lease, are neglecting the croft? Should the Commission not be able to intervene?

Unless I am missing something, as it stands it would appear that once consented to a sublet of a croft cannot be brought to an end by the Commission. Thus an absentee tenant could enter into a 10 year sub-tenancy arrangement with his brother who resides local to the croft which on the face of it the Commission are happy to consent to. Then the brother does absolutely nothing to cultivate the croft. What are the Commission to do?
simply having consented to the sublet they are now powerless as a result of
the proposed new Section 26E(d)(i) of the 1993 Act. Has the Scottish
Government in effect created a loophole for absentee crofters to exploit? If so
it should, perhaps, be closed.

Whilst the Commission may terminate a short lease in terms of the proposed
new section 29A(4) of the 1993 Act are the Commission, having done so, able
to then take action under the proposed new Section 26J of the 1993 Act? This
is perhaps unclear as it is arguable that by simply consenting to the let the
Commission are then precluded from taking any such action by virtue of the
proposed new Section 26E(e)(i) of the 1993 Act. This is perhaps another
loophole that needs closing.

As an aside section 28 of the 1993 Act (Special provisions regarding
subletting of crofts not adequately used) was completely repealed by section
11 of the Crofting Reform etc. Act 2007 with effect from 25 June 2007. These
provisions first appeared as section 12 of the Crofters (Scotland) Act 1961
but, as far as I am aware, were never brought into operation: a Statutory
Instrument being required to do so under subsection (17). Parliament may
wish to consider whether these provisions would serve any useful purpose if
actually re-introduced and brought into operation subject to any necessary
amendments.

Section 23 (New Section 26H to the 1993 Act)
Should the crofter not be given the opportunity to assign their tenancy, if they
wish to do so, prior to termination?

Section 23 (New Section 26J to the 1993 Act)
Should the owner-occupier not be given the opportunity to sell their croft, if
they wish to do so, prior to being required to let it?

PART 4 – Further amendments to the 1993 Act
Section 25
It is pointless extending the ‘clawback’ period from 5 years to 10 years whilst
not dealing with the anomaly created by the decision in Whitbread -v-

It was raised by a delegate at the WS Society/Crofting Law Group Conference
in Edinburgh on 12th June 2009 that the Bill was an opportunity to remedy the
loophole created by Whitbread -v- Macdonald 1992 SLT 1144. I would
endorse that view. A landlord who is being required to sell croft land by order
of the Land Court is entitled by section 14(3) of the 1993 Act to seek a second
payment or “clawback” on a subsequent disposal to anyone who is not a
member of the crofter’s family. But the plain meaning of this provision was
affected by the decision of the Court of Session in Whitbread -v- Macdonald.
There it was held that when the Land Court authorises acquisition under
section 13(1) of the 1993 Act this is to be viewed as a single transaction and
not a separate disposal of the land even where the conveyance is to a
nominee outside the crofter’s family.
This decision often results in landlords making it difficult for third party purchasers who are not members of the crofter’s family to acquire land as a nominee of the crofter rather than directly from the landlord with a resumption application being progressed under section 20 of the 1993 Act and the landlord and the crofter in effect receiving one half of the consideration being paid by the third party. It is undoubtedly the case that as a result of Whitbread -v- Macdonald third parties often do “deals” with crofters resulting in the landlord being deprived of a share in the purchase price that they would otherwise have received. It would appear just and equitable for this anomaly to be closed with the “clawback” provision applying immediately the crofter nominates a purchaser who is not a member of the crofter’s family. This would make purchases by third parties who are not members of the crofter’s family more straightforward with one simple principle applying whether that party contacted the crofter in the first instance or the landlord in the first instance.

I made these same comments in response to the Consultation Paper (published in March 2005) on the last Draft Crofting Reform (Scotland) Bill and also in my response to the Consultation Paper (published in May 2009) on the latest Draft Crofting Reform (Scotland) Bill.

Patrick Krause indicated, at the Future of Crofting Conference, that the majority of the members of the Scottish Crofting Federation considered the Whitbread loophole to be a “mechanism for cheating” and were happy to close it. There should therefore be little problem in the Scottish Parliament now amending the Bill to do so.

Sections 26 & 27
These sections now deal with an issue I raised in my response to the Consultation Paper (published in May 2009) on the Draft Crofting Reform (Scotland) Bill. They do not, however, go as far as I had suggested which was to streamline the decrofting process. At the moment if a development is proposed on croft land it can take some time to realise that development. Planning Permission must be obtained first and then it can take 13 weeks for an application for a Decrofting Direction to be progressed with a further 42 day appeal period after the granting of a Decrofting Direction before it can take effect. This is frustrating for parties with a genuine need to decroft. The Scottish Parliament should be taking the opportunity of the Bill to streamline the process and speed it up. Possibly by linking the Decrofting and Planning processes together with each happening at the same time and the two bodies involved consulting with one another. Alternatively, allowing an application for a Decrofting Direction to be made before or at the same time as an application for the grant of Planning Permission with the Crofting Commission being able to grant a Decrofting Direction that is conditional upon Planning Permission being granted. The Resumption procedure is not as drawn out as the Decrofting procedure is so there is perhaps less need to streamline that. However, the question of resumption being granted conditional upon Planning Permission being granted would also be worth looking at.

Sections 28, 29, 30 & 31
No comment.
PART 5 – General and Miscellaneous
Section 32
Consolidation of the Crofting Acts should not be a separate process. This should be part of the Bill with a Consolidated Act being produced immediately the Bill is enacted. Indeed the Scottish Parliament should look at this as a matter of policy when introducing any legislation that substantially amends existing legislation.

Sections 33, 34, 35, 36 & 37
No comment.

SCHEDULE 1 – The Crofting Commission
No comment.

SCHEDULE 2 – Minor and consequential Modifications
No comment.

Other matters arising
Whilst not issues arising from the Bill as drafted I consider that the Scottish Parliament should be taking the opportunity of the Bill, on the basis that there is unlikely to be another Crofting Bill for some time, to resolve several issues that arise in Crofting Law.

The Deemed Croft and resolving an anomaly
The Bill would provide an opportunity to resolve an anomaly concerning Deemed Crofts. Following the decision in Bowman v Guthrie 1997 SLCR 40 it was held that a deemed croft, if not purchased at the same time as the croft to which it pertained, became a stand alone croft which fell outwith the definition of ‘croft land’ in section 12(3) of the 1993 Act as there was no other relevant part to it. Thus there was no right to purchase it even if adjacent or contiguous to the original croft. There appears to be no good reason for this anomaly and it is one that could be easily resolved by was of a minor provision within the Bill.

Removing land from crofting tenure if already developed for 20 years or more
The Bill would also present an opportunity to resolve an ongoing issue in the crofting counties in relation to land that has not been used for crofting purposes for a considerable time but remains subject to crofting tenure. Where land has been developed for a period of more than 20 years and clearly not been used for crofting purposes for 20 years should it not simply be stated that such land is removed from crofting tenure without the need for a Resumption Order or Decrofting Direction? This is a recurring problem in conveyancing throughout the crofting counties and one where a great deal of time and effort often requires to be employed by conveyancers in ascertaining the historical position of the land involved sometimes dating back to 1886 in order to ascertain whether or not a Decrofting Direction or Resumption Order should have been applied for in respect of the land in question.
Situation arise where houses were built on common grazings after 25th June 1886 being the relevant date on which the term “crofter” was defined by the Crofters Holdings (Scotland) Act 1886 and at which point a crofter obtained security of tenure with there being reserved to the landlord a right to seek resumption of croft land for a reasonable purpose, subject to payment of compensation to the crofter. There are instances where crofters as far back as say 1887 allowed individuals to develop croft land without seeking any compensation in respect thereof. It appears inequitable that more than 100 years later the successors of the crofters in question should now be able to seek compensation on resumption for developments that have taken place over 100 years ago at a level reflecting current day valuations.

A rule could easily be introduced under and in terms of the Bill to ensure that if croft land has been developed and not used as croft land for a period of more than 20 years then it shall be deemed to no longer be subject to crofting tenure. This is a much needed reform of crofting law which would simplify conveyancing in the crofting counties and reduce the work of the Land Court, the new Crofting Commission and solicitors who are involved in resolving such situations on a regular basis. It would also remedy the arguable injustice caused to owners of properties who through no fault of their own have inherited a problem created by their predecessors in title often some considerable time ago and with the obvious consent and concurrence of the crofters involved at the time.

I made these same comments in response to the Consultation Paper (published in March 2005) on the last Draft Crofting Reform (Scotland) Bill and also in my response to the Consultation Paper (published in May 2009) on the latest Draft Crofting Reform (Scotland) Bill.

**A croft that has not been registered in the Register of Crofts is not a croft**

The Crofting Reform etc. Act 2007 introduced new subsections (1)(f) and (1)(g) to the 1993 Act extending the definition of a croft to include any holding which at the date of commencement of section 21 of the Crofting Reform etc. Act 2007 or on any subsequent date has been entered in the Register of Crofts for more than 20 years. The converse should also be the case with any holding that has not been entered in the Register of Crofts by a specified date not being a croft. This will avoid the ongoing problems in the crofting counties where people try to establish that a holding is a croft when it has never been openly recognised as such. The history of the holding has to be traced from 1886 and the legislation that applied over the years looked at in great detail with the Land Court often being involved to resolve the issue. One final window of opportunity could be given for those that want to establish the position before the door is closed on them. A minor amendment to the Bill would easily achieve this.

**Why drop the provisions in respect of standard securities?**

Gone completely from the Bill is the proposal that was contained in the Draft Bill to provide crofters with the option of using their tenancy as security for a loan. The Policy Memorandum states that “although the Committee of Scottish Clearing Bankers indicated that they were satisfied that the proposals
provided a sufficient framework for lending, other responses to the consultation indicated that crofters would prefer to continue with current arrangements where they decroft a house site in order to access loan finance. As a result, this proposal has been dropped from the Bill.” I am unsure of the logic in this given that it perhaps contradicts the provisions that seek to prevent decrofting in respect of speculation of croft land. Furthermore, it does not address the situation of young crofters wishing to raise finance to actually purchase a croft as opposed to “a house site” on a croft. What would have been the harm of leaving these provisions in the Bill and giving crofters the option of granting securities with or without decrofting? Consideration should be given to re-introducing these provisions.

Brian Inkster
3 February 2010

SUBMISSION FROM MARGARET KING

Dear Sirs,

I am writing as the owner/occupier of a croft on the Isle of Luing, although it is not a croft in the legal sense. My husband and I bought a plot on the shore of Luing Island in 1973 to build a retirement home, and it came with 2.12 hectares of grassland at a higher level. We have lived here since 1974 and used the land for poultry, goats, sheep and vegetables and fruit.

Luckily, we had the means to fence the land, plant shelter, buy seeds, stock etc and with help from family were able to manage it and enjoy it, but it was never possible to sell the produce, and rules and regulations become impossible to comply with, so we now rent it to a sheep farmer, and will continue to do so.

The Luing Community Trust asked for land to start an Allotment Scheme with polytunnels but after planning was complete the project failed, which was a great disappointment.

I began this letter after reading an article in the Oban Times (16th Jan) about the Crofting Bill. The current Oban Times mentions a series of up-coming public meetings – one in Oban – “to host Inquiry into Future Support for Agriculture in Scotland”. I hope the meeting will address all the difficulties that face smallholders, with local consultations.

Margaret King
22 January 2010
SUBMISSION FROM NEIL F KING

Part 2 – The Crofting Register

1.1 As a retired solicitor who used to deal with property in the Highlands & Islands, I am supportive of the principle of an authoritative map based register of crofts but if you haven’t the stomach for all four pages of my views on the detail of the subject, you could fast forward to 7 - Suggestions at the end.

1.2 As a general preliminary point, I think it’s a pity an enhanced crofting register couldn’t have been achieved by integration into the Land Register (LR) – i.e. making crofting tenancies registrable interests in the LR and the status as owner-occupied croft land something to be noted on the LR similar to real burdens. This is against the background that the Scottish Law Commission is currently working on a review of the LR and there has been a mushrooming of registers affecting rural land recently what with the Register of Community Interests in Land and the SSSI Register – and here we are about to add another one.

1.3 That point aside, I urge that a lot of further thought needs to be given to Part 2 of the bill. This is partly because the details – wherein, of course, lies the devil – of the procedures for, and consequences of, registration in the proposed new Crofting Register was not consulted upon. This is because the draft bill annexed to the Government’s consultation of May 2009 left these details to be specified in subordinate legislation which, presumably, would have had its own consultation. (The committee will note that Part 2 of the draft bill annexed to the consultation was only two sections (being effectively (1) there will be a new register; and (2) details to be specified by subordinate legislation) whereas Part 2 of the bill now before parliament contains fifteen sections!)

1.4 My principal criticism of Part 2 is that there may be insufficient safeguards in the registration process to prevent land which is not, in fact, croft land being irreversibly registered as such. Also, there’s no sanction for failure to register which could lead to the whole thing being still born especially as, in some circumstances, registration could impose a massive administrative burden.

2 – Background

2.1 The committee will recall that the impetus for a new register is that the existing Register of Crofts (RoC) maintained by the Crofters Commission (CC) is “incomplete and outdated”. It’s also not map-based and consists only of postal addresses of crofts: you can’t go to the CC with a map of a piece of land and ask them to tell you from the RoC if it’s croft land or not.

2.2 Hence a new “Crofting Register” (CR) to be maintained by the Keeper of the Registers of Scotland (RoS). It will be map based with each croft

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2 Policy Memorandum, para. 3, 2nd bullet
registered in it being outlined on an Ordnance Survey map in its "title sheet" (Bill, s.10(2)(a)). The effect of registration is that all land shown on maps in title sheets in the CR is incontrovertibly croft land (s.18(2) inserting new s.3ZA(1)&(2) into the Crofters (Scotland) Act 1993).

2.3 Section 4 of the bill sets out the events which trigger compulsory first registration in the CR of a croft not hitherto registered in it. The principal trigger events are:-

- transfer (including by inheritance) of the landlord’s interest in a tenanted croft or of the ownership of an owner-occupied croft (s.4(1)(b)(i))
- assignation or transfer by inheritance of a crofting tenancy (s.4(3)(c),(e)&(f))
- application for de-crofting (s.4(3)(j))

2.4 Given that registration in the CR has the effect of definitively and (possibly – see 3.7 below) irreversibly decreeing the land concerned to be croft land, what safeguards does Part 2 contain to ensure that this can’t happen by accident?

2.5 The committee should be aware at this point that crofting tenancies are very seldom in writing so consequently seldom have a deed plan. In my experience, landlords rarely have much more information than tenants and often much less\(^3\). This is because the financial returns to landlords from crofting tenancies are so negligible, it’s not worth the professional input. Documentation of the average crofting tenancy tends, therefore, to be scanty to non-existent. This is in contrast to titles to land where there will always be a series of written conveyances by one owner to the next, each usually referring to a deed plan of the land concerned.

2.6 The first safeguard in the bill is that an application for registration in the CR has to be sent to the Crofting Commission (s.10(1)). The CC must check the application against any information relating to the croft in the existing Register of Crofts before forwarding it to Registers of Scotland, with or without comment (s.10(4)). The CC can also request further information from the applicant (s.10(5)). However, given the admitted deficiencies of the RoC, the CC’s input is a valuable but by no means foolproof safeguard.

2.7 The second check is RoS who can reject an application if it’s not accompanied by “such documents and other evidence as [RoS] may require” (s.7(1)) That’s a phrase borrowed from the Land Registration Act where it’s a reference to the written title deeds to land. It’s less clear what it refers to in the context of crofting where, as noted, there is seldom much documentation – except perhaps a map of the croft endorsed with “I certify to the best of my knowledge and belief that these are the boundaries of Croft 15 Achdubh” coupled with no comment from the CC.

\(^3\) With the possible exception of Department of Agriculture crofting estates created by land settlement schemes between the wars which presumably involved maps of the holdings which still exist.
2.8 Recognising, perhaps, that these two checks are insufficient, the bill builds in a third (which has no parallel in the Land Registration Act). This is a procedure for challenge of the registration. In essence, the CC must notify the registration to the landlord and tenant (or owner-occupier) of the croft which has been registered and of any adjacent crofts (s.11(1)-(4)). The applicant for registration must also advertise the registration by placing a local newspaper advert for two consecutive weeks and a notice on site (s.11(6)). Anyone may then challenge the registration in the Land Court (LC) within six months (s.12) but if no challenge is made (or the LC dismisses a challenge), the registration becomes final (s.9(1) & (4)).

3 - Case Study A

3.1 In 2008, Mr McX, the tenant of croft No 12 Achdubh on Ardban Estate, obtained planning permission for a house, decofted the plot and sold it for £40,000 by the usual shortcut whereby Mr McX as tenant exercises his statutory right to buy his freehold by requiring his landlord to convey the land directly to the purchaser, Mr Y.

3.2 In 2011, after the bill is in force, the house has not yet been built (although its planning permission remains live) or the site even fenced off from the rest of the croft: Mr Y doesn’t live locally. The owner of Ardban Estate – which includes 100 crofts – then dies and the transfer to his heirs triggers registration of all the crofts on the estate not yet registered in the new Crofting Register: this is the vast majority of them and includes 12 Achdubh. As is common, the estate crofting records are fragmentary and haven't been well maintained. One way or another, the sale of the house plot at 12 Achdubh is overlooked and the new owner of the estate submits an application to register the croft per a map which still includes the plot and indicating Mr McX as tenant of the whole. Will the three checks in the registration system detect the error?

3.3 Will the Crofting Commission make the connection between the application to register No 12 Achdubh with the application to decoft the house plot they processed three years earlier? Given the admitted deficiencies in the existing system of croft registration which have prompted the current proposals, there must be at least a question mark over this.

3.4 The second check, RoS, will not detect the error: RoS have no special knowledge or insight into the situation. This leaves the challenge procedure. That relies on notification to Mr McX and neighbouring crofters by the CC and the new landlord placing two local newspaper adverts and site notices on all the crofts on the estate.

3.5 Mr McX stands to gain massively by the error if it goes undetected because he will become the crofting tenant of a house plot with planning permission which he will be able to buy at agricultural value in virtue of the

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4 A typical figure. Borve etc. Estate on Harris sold by the Scottish Government to its crofters in January 2010 has 52 crofts. Galson and South Uist Estates, also recently sold to their crofters, have 600 and 850 respectively.
right to buy and sell again at full development value. So we can't rely on him to expose the error. Will any of the neighbouring crofters the CC has to notify? Does the CC have the resources to identify who these neighbours are anyway?

3.6 Mr Y, the owner of the house plot, doesn’t take the local paper so doesn’t see the adverts and the site notice has perished long before he next visits. Six months pass and his right to retrieve his valuable building plot has been lost.

3.7 Does Mr Y have any further right of appeal? Section 14(1)(b) of the bill provides that RoS must “rectify” the Crofting Register on being ordered to do so by the Land Court, Court of Session or Sheriff Court. So perhaps Mr Y could apply to one of these courts to ordain RoS to rectify the CR by “de-registering” his house plot? But that avenue may fall foul of the general legal principle that, if legislation provides an appeal procedure, it is presumed that no further right of appeal is available. I'm not enough of an expert on that area of law and I suggest the Committee takes evidence from someone who is. Section 14(1)(a) provides that RoS may rectify the CR even when not ordained to do so by a court. But RoS may take the view that, unless a rectification is agreed by all interested parties, it can’t revisit a registration once the door has closed on the six month challenge procedure in the bill. Finally, s.17 provides that “a person aggrieved by any act or omission of [RoS]” may appeal to the Lands Tribunal (why add yet another court to the list, incidentally?) which has power to order RoS to rectify the CR. But that jurisdiction may also be limited by the general principle already referred to.

3.8 Note that there’s no time limit on an appeal against a registration in the Land Register. (Although land registration involves the principle that you can only retrieve your land from a “false registration” to a third party if he’s not in possession of it: if he is, you only have the right to “indemnity” (state compensation for the value of the land you’ve lost). This is not the same as the indemnity referred to in s.15 of the bill which is only for mistakes made by RoS.)

4 - Case Study B
4.1 Same facts as before except that, instead of omitting Mr Y’s house plot altogether, the new owner of Ardban Estate and Mr Mc X, the crofter, both make an honest mistake about the extent of the plot and a smaller area is marked: this could easily happen due to discrepancies between the current OS map and the deed plan used in the decrofting process and the conveyancing of the plot. As the bill contains no provision for non-crofting neighbouring owners to be informed of registration (s.11(3)(e)-(h)), Mr Y could wake up one morning to find that a chunk of his property has been “resumed” back into crofting.

5 - Case Study C
5.1 Note in passing the immense administrative burden on the new owners and the CC in the event of a crofting estate changing hands. It involves plotting the boundaries of potentially dozens if not hundreds of crofts
(remember that very few landlords have maps of these, even old ones, to
work from) and correlating these with areas which have been decrofted etc. In
the case of a crofting community purchase, the expense of this will, in
practice, fall on the public purse.

6 – Sanctions
6.1 The bill decrees registration in the CR by stating “An unregistered croft
must be registered ... [in the following trigger events]” (s.4(1)). But the bill
doesn’t seem to specify any sanction against failure to register a croft despite
a trigger event. If the burden of registration is too great then, in the absence of
a sanction, people won’t bother and the CR will be as still-born as the old
Register of Crofts. In the Land Register, the sanction is that the trigger event
has no legal effect until it is registered. For e.g. an assignation of a crofting
tenancy will not take effect until the croft had been registered in the CR.

7 - Suggestions
I respectfully suggest the Committee considers taking evidence from:-

7.1 the Scottish Law Commission (SLC) as to whether there would be
merit in integrating a new authoritative map based register of crofts into the
Land Register (see 1.2 above)

7.2 an appropriately qualified lawyer, perhaps from the SLC, on whether
expiry of the six month period without challenge precludes a subsequent
application for rectification of the CR under s.14 and/or 17 (see 3.7 above)

7.3 the Crofters Commission (CC) on the issue of whether, in practice,
when scrutinising an application for registration, it would be likely to pick up a
previous decrofting from the croft overlooked by the applicant (see para. 2.6
and Case Study A, paras 3.3 & 3.5 above).

7.4 the owners of a large crofting estate such as Storas Uibhist (South
Uist Estate with about 850 crofts) on the practicalities of mapping all the crofts
were they purchasing the estate after the bill was in force (see para 5.1
above).

I also suggest the following amendments to the bill:-

7.5 Transfers of landlords’ interests in tenanted crofts be removed
from the list of events triggering compulsory first registration – because
in practice landlords don’t have the information to be able to pilot a
registration process which has potentially serious consequences for third
parties. There is also the administrative burden in the case of transfer of a
crofting estate (see Case Study C, para. 5.1).

7.6 The crofter applying for registration (rather than the CC) should
notify landlord and neighbouring crofting and non-crofting interests and
swear a notarial affidavit they have done so to the best of their
knowledge and belief - Given the scarcity and unreliability of documentation
surrounding crofting, it’s the crofters themselves who are likely to have the
best information rather than landlords or the CC. The notion of the applicant
giving notice is familiar from planning law and there’s a precedent for
affidavits in the procedure for preservation of burdens in the Abolition of
Feudal Tenure Act 2000 (s.18(4)) (For the avoidance of doubt, I’m not
suggesting removal of the “filter” through the CC or the newspaper adverts
and site notices – as in planning law, again.)

7.7  **Make clear that expiry of the 6 month challenge period doesn’t
preclude subsequent rectification of the CR to correct a false
registration** - depending on evidence heard as suggested at 7.2 above.

7.8  **Incorporate a sanction for failure to register** – see para. 6.1 above.

Neil F King
27 January 2010

**SUBMISSION FROM THE LAW SOCIETY**

**INTRODUCTION**

The Law Society of Scotland (“The Society”) welcomes the opportunity to
comment upon the Crofting Reform (Scotland) Bill as introduced in the
Scottish Parliament on 9 December 2009 and has the following observations
to make.

**GENERAL COMMENTS**

The Society’s Rural Affairs Sub-Committee (“the sub-committee”) responded
to the Scottish Government’s earlier consultation on the draft Crofting Reform
(Scotland) Bill in August 2009 and is pleased to note that the new bill appears
to have taken into account a number of concerns that the sub-committee
raised, particularly in relation to standard securities, the need for greater
clarity in primary legislation (especially in respect of rectification) and for
consistency of approach.

One overriding concern which the sub-committee has is that if this bill is
enacted, crofting legislation will become very difficult to read and interpret
because of the large number of provisions which will be added to existing
legislation: for example section 20 of the 1993 Act, which will now have
clauses numbered (1A), (1AA), (1AC), (1AA)(a), etc. There are other
eamples. The sub-committee strongly recommends codification in
consolidating legislation as soon as possible.
SPECIFIC COMMENTS

Part 1 – Reorganisation of the Crofter’s Commission

The sub-committee has no comment to make on the general thrust of Part 1 of the bill. There may be some practical concerns arising from the fact that crofting grants will come out of the Scottish Rural Development Programme (SRD) and go under the auspices of Highlands and Islands Enterprise (HIE), which may impact on cost and efficiency but this is not a legal point and is for other concerned parties to consider.

The sub-committee would question the obligation on the Commission under section 2D(1) to “have regard to” any plan produced and approved under section 2C. Given the unequivocal terms of the requirement to produce a suitable plan, the terms of section 2D(1) seem comparatively weak. The House of Lords held in the case of Harvey v Strathclyde Regional Council\(^5\) that a duty “to have regard” to a matter does not mean that it has to be followed but simply that, provided regard is had to it, it can then be disregarded. The sub-committee would suggest substituting the phrase “have regard to” with “take into account”, as it imposes a more positive obligation.

Part 2 – Crofting Register

The sub-committee would wish to preface its observations on Part 2 of the bill with the general comment that it is in favour of the establishment of a Register of Crofts in principle, as it should simplify matters over time.

Section 5

The sub-committee would question the need to have as comprehensive a list of triggers for registration, as set out in section 5 of the bill.

While the sub-committee suspects that the reasoning behind having such a long list of circumstances requiring registration is to try to create as comprehensive a record as quickly as possible, the problem that the sub-committee would foresee is how this would work in practice with the requirement that the person who triggers the event will have to pay for registration.

For example, if the trigger is a boundary dispute between crofters, in most instances this is unlikely to involve the landlord on a practical level. The sub-committee would conclude that for landlords to be responsible for registration is impractical because the landlord may well be so far removed from any

\(^5\) 1989 SLT 612
understanding of what the position is and also, more fundamentally because the landlord’s legal right and interest in the croft are entirely different from the arguably greater interests of the crofters themselves to ensure that their crofts are adequately registered.

The sub-committee would instead suggest substituting a time limit. This would have the added benefit of fitting in with the registration system for land, where some triggers are in place but there is also a point where there will be a general requirement to register land. The sub-committee is of the view that there is merit in harmonising the processes for registration.

Notwithstanding the previous point, the sub-committee is of the view that further consideration should be given to how the land register and the crofting register will interact, for example in terms of how to deal with the potential for contradicting information. There is also nothing in the bill to suggest that registration in the land register and registration in the crofting register should take place simultaneously. This may need further consideration as well.

Section 6

The sub-committee appreciates that the intention of section 6(2)(b) is to try to ensure that the registration process does not hold up either purchase or sale of the croft however section 6(8) creates uncertainty as to when change of ownership is effected. The sub-committee does not see why the power to decide when change of ownership takes place in certain circumstances should lie with Scottish Ministers. The point at which ownership changes hands is well established in Scots Law and should not be interfered with for one particular purpose.

Section 10

Given that the purpose of the Register is to introduce a greater degree of certainty, the sub-committee would suggest that the title sheet should include other details, such as whether there is a right of access and where it is in relation to the croft; all servitudes or similar rights, and pertinents enjoyed by the croft.

Section 12

According to section 12 of the bill, the persons listed in sub-section 3 may be able to challenge the registration of a croft under sub-section 4(d) within 6 months beginning from the date on which the Commission received the copy of the certificate of registration (sub-section 5). Notwithstanding the terms of section 12(1), which says that the Commission must notify the persons listed on receipt of the certificate of registration, the sub-committee is of the view that the 6-month period should begin from when the persons listed are notified of the registration, as there may be the possibility of delay or error which could impact on the 6-month period.
The sub-committee is also of the view that the terms of section 11(3) should be extended to include other crofters in the township (if appropriate). In practice, not all crofting boundaries are as clearly delineated as to prevent crofters from neighbouring but not necessarily adjacent having an interest in the matters listed in section 12(4). Section 11(3) should also be extended to include non-crofter neighbours.

Section 13

In the sub-committee’s view, the purpose of section 13 is not entirely clear. Given that the term "ranking" has an established meaning in other branches of the law, particularly in relation to insolvency and securities, it is the sub-committee’s view that it would be confusing to use it in the crofting context and that, in any case, the intention behind section 13 would be much more clearly expressed by transposing the language used in the explanatory note.

Section 15

The sub-committee would appreciate clarification on the circumstances that would lead the Keeper to exercise his right under section 15(4) to exclude, in whole or in part, any right to indemnity under section 15 in respect of anything appearing in, or omitted from, the title sheet of a croft.

Part 3 – Duties of crofters and owner-occupier crofters

Section 21

In its previous response to the Scottish Government’s consultation on the draft bill, the sub-committee requested clarification on whether the proposal to insert a new section 19B in the Crofters (Scotland) Act 1993 (“the 1993 Act”) intended to have the effect that bodies corporate could be owner-occupiers of crofts. The sub-committee expressed the view that as such an outcome would breach one of the fundamental principles of crofting, it was therefore an undesirable consequence.

In the sub-committee’s view, it is still unclear whether this could be a possible unintended consequence, as the definition of owner-occupier as contained in the proposed new section 19B of the 1993 Act (as inserted by section 21 of the bill) does not cut across the statutory definition of ‘natural person’. While section 19B(1)(b)(i) would have to refer to an individual, a body corporate could be a successor in title (section 19B(1)(b)(ii)), and the sub-committee does not think that there exists any statutory provision that prevents a body corporate from being an ‘occupier’ as per s19B(1)(c)(ii).

Section 24

One of the principle aims of the bill is to address the issue of absenteeism and neglect of crofts. The sub-committee is of the view that the provisions for the creation of a short-term lease contained in section 24 (inserting section 29A into the 1993 Act) could have the unintended consequence of creating a
mechanism to avoid the proposed extension to the claw-back provisions contained in section 25.

The sub-committee is of the view that this type of lease is at odds with the principle of bringing owner-occupiers more in line with crofters, as it appears to give owner-occupiers the opportunity to leave the croft. This will also put owner-occupiers of crofts into a class apart from owner-occupiers of non-croft land, until the minimum term of a Limited Duration Tenancy ("LDT") under the Agricultural Holdings (Scotland) Acts is reduced; and unless the terms on which short-term leases can be granted are analogous to LDTs.

For these reasons, the sub-committee would suggest that further thought should be given to the conditions imposed on the use of short-term leases.

Part 4 – Further amendments of the 1993 Act

The sub-committee has no comments to make.

Part 5 – General and miscellaneous

The sub-committee has no comments to make.

SUBMISSION FROM JOHN MACKENZIE

Crofting Reform (Scotland) Bill.

Background information.
It may be helpful for members of your Committee if I firstly give some background information concerning my status and personal interest in the current process of amendment to the draft Bill. Although having been born in Glasgow and having returned there in my early teenage years, I have all my life had a close involvement with this community. The tenancy of my principal croft passed to me by inheritance in succession from my great-grandfather, my grandmother and my mother. I vividly remember the days when it was essential for the survival of my forebears that the croft was carefully husbanded. Oats, potatoes and turnips were grown to sustain the family and their stock. Because part of the land sloped down to the sea, my grandfather would annually carry on his back in a creel the soil from the final drill to the top of the croft to compensate for soil drift due to the effects of cultivation. Each crofter had allocated to him a strip of the foreshore from whence to harvest ware to act as fertiliser for the soil and this was carried onto the land in creels on their backs. That level of labour was essential for survival in these days. My croft is made up of small areas of potentially arable land, which is extensively littered by clearance cairns. These bear testimony to the toil and sweat involved in turning the bare rocky land to which my predecessors were cleared into land capable of just about supporting a family. The economic implications for the human population of our crofting communities in those days are now hopefully gone for ever. Yet it seems that the vision of those who are apparently driving forward the current legislation is an attempt to
have crofters return to such circumstances. Perhaps I may be forgiven, on that basis, for having suggested in my earlier letter in this connection dated 11 August 2009 that it appears to some of us who have a emotional link with the land of our fathers that those who are apparently driving forward the current proposals for reform of crofting have little empathy or sympathy with the history of crofting. Sadly it appears that this attitude even extends to some in our own day having a significant public image who have written and commented extensively on that history but know nothing of the practical implications of the toil and frustrations of having to survive in the current agricultural economic climate.

My presence in this village is the direct result of my having succeeded through inheritance to the tenancy of our family croft. For a number of reasons I chose to settle on the croft earlier in life than had been originally intended and brought my wife and young family here over 30 years ago. In doing so I separated from my then business colleague, leaving behind a small engineering business in which I had been the principal technical influence. That business continues to trade in central Scotland under a title that incorporates my name but with which I immediately ceased to have any involvement when I moved north. A significant thrust of the current proposals for reform of crofting legislation is to destroy the link that many of the successors of those who originally created these crofts have with the land of their fathers. Many of them are unable to take the kind of action that I chose at the time but still cherish the hope of being able to return in the future. A significant number of those who are absentee were forced by generations of economic hardship to seek gainful employment elsewhere or left the place of their birth to advance their educational attainment. Had these proposals been in force thirty odd years ago I and others like me would have been unable to contribute our energy and experience to our communities. In my case, apart from my own business activities having over the years generated employment opportunities for around a dozen people, I was one of those who led the original historic Assynt buyout of our crofting land. I think that it is reasonable to assert that in addition to possible qualities of leadership, my main contribution to that was the business knowledge gained during years of experience elsewhere.

One might ask what is the ultimate aim of the current proposals? The Policy Memorandum document states inter alia that it is to “ensure that crofting continues to contribute to sustainable growth in some of Scotland’s most remote, rural communities.” This quite simply is economic nonsense in the current agricultural climate of oppressive regulation and diminishing returns for labour expended. Numerous examples can already be cited throughout our communities of crofts having passed into the hands of incomers without any tangible economic output being evident. I readily accept the desirability of addressing neglect if that can be shown to exist. Today the principal agricultural use both for inbye land and outrun is for grazing stock. If the land is fenced and drained and is free of rashes and bracken it cannot be regarded as neglected. I submit therefore that most of our crofting land, whether in the hands of absentees or locals are being managed by the resident shareholders in a manner that is consonant with the current economic climate. What is
really needed is a genuine economic development strategy for our remote communities, something that government and the development agencies have failed to generate over recent decades. The appropriate way forward is to ensure that absentees who are the successors by inheritance of those who created these crofts in the first place reach a formal agreement with local shareholders in terms of managed grazing and other use of inbye land. It may also be appropriate to create a mechanism whereby grazings shares currently in the hands of such absentees are transferred to resident shareholders. Such a mechanism would also require some provision for reversing this in the event that the absentee is able to return.

Adjustments to date to original proposals

- I am thankful that the proposed Area Committees have been abandoned and that the network of community assessors is being retained. I am yet to be convinced of the appropriate mechanism for election of crofting representatives to the Commission.
- I remain unconvinced of the need for a new Crofting Register. The existing flawed Register should be updated by the Commission without cost to crofters.
- I am very thankful that the proposal to use a croft tenancy as security against commercial lending has been dropped.
- Removal of the occupancy requirement as a supposed means of addressing speculation on croft land is welcomed. I am content with the proposed strengthening of the powers of the Commission in this connection. I will continue to insist that the Commission proceeds with sensitivity and caution where it is proposed that the successors by inheritance of croft land be dispossessed.
- Insensitive application of the 16km rule in the above circumstances is not appropriate and a suitable mechanism for dealing with this needs to be found. On the other hand, instances can be cited where incomers have gained croft tenancies on the basis of ambitious statements of development intent which have never, and will never materialise and such people have moved to another location still within the 16km radius. In contrast to the circumstances affecting absentees who are inheritors by succession, this cannot be just.
- In general I am content with owner occupiers being treated equally with tenants in terms of the proposals, subject to the other concerns noted.

Comments on remaining proposals.

1. In general terms I am content with the proposed changes to the structure of the Commission. In particular I welcome the proposed elected structure but await with interest further details of the mechanism for this process.

2. I continue to regard the proposed new Register of Crofts as unwelcome and unnecessary. I would commend a rethinking of this proposal that would involve an updating of the current Register. Although the current IACS mapping system is still in some disarray this could be used as the basis for a modified map based system for the current Register.
3. There needs to be a much more sensitive approach to the proposed duties of crofters and owner-occupiers. The proposals in regard to supposed absenteees is not nearly sensitive enough to meet the needs of those who are tenants or owner-occupiers by inheritance. In such circumstances a formally regulated sub-let arrangement, reviewed at suitable intervals, should be considered. This would ensure productive use of the land by resident local crofters without the irrevocable penalty of dispossession. The provisions in item 58 of the Policy Memorandum needs to be amended in a sensitive way to take account of this. There also needs to be a much more realistic application of the 16km rule in such circumstances. The Commission’s recent letters to absenteees falling into the category that are my concern are far too insensitive in this connection. The provisions envisaged in items 61 and 62 fail to adequately take account of the grazing pattern of today’s agricultural climate. The suggestion that absenteeism equates with neglect is most certainly not necessarily the case. There are undoubtedly instances of neglect of fences and drainage on the part of those who are resident.

4. While it is indeed true that there have been a number of cases of commercial speculation on croft land that need to be addressed in terms of legislation the fact is that many active crofters have been able to engage in other commercial ventures that have been funded in this way. It is therefore felt that the proposed legislation is unjustifiably prescriptive. It is therefore imperative that where the Commission receives a decrofting application from a resident crofter that this is treated in a much more sensitive manner than an application from an absentee.

5. Conclusion.
While I welcome the amendments already proposed to the draft Bill, I am not convinced that the current provisions properly address the declared policy agenda of regeneration of crofting. The focus is in the wrong direction and should be on economic regeneration of our communities. Crofting would inevitably flourish in such an environment. Personally I still feel that the Bill should be scrapped because its agenda will not be achieved by its current provisions.

John MacKenzie
3 February 2010

SUBMISSION FROM ANNE MACLEOD

1. Residency Duty
I wish to comment on Part 3 of the Crofting Reform (Scotland) Bill, in particular Section 5AA which stipulates that ‘a crofter must be ordinarily resident on, or within 16 kilometres of, that crofter’s croft’. While appreciating that absenteeism and neglect are significant issues in some districts, I am concerned that this aspect of the Bill may unwittingly penalise tenants who do not abuse the current system. I know from observation that a distance of 16
km between croft and tenant in no way compromises the latter’s potential to make full use of the land at their disposal and to make a valued contribution to the life of the crofting community. It seems a pity that such individuals should be subjected to the bureaucratic process of applying to have this contribution measured and sanctioned.

My contention is that, even taking into account the crippling cost of fuel in many crofting districts, working a croft over a distance of 10 miles is not by any means impracticable. To put this in context, several west coast crofters and farmers take advantage of the availability of grazings on Easter Ross farms more than 50 miles away, ‘commuting’ at regular intervals for the purposes of checking and tending to stock. It is an obvious fact that more land – even if inconveniently situated – makes for a more viable agricultural unit, and the majority of crofters committed to their livelihood are prepared to take advantage of this.

Professor James Hunter’s additional evidence to the Committee contains the worrying suggestion that crofters living outside the residency boundary might be financially penalised by a scale of registration charges. In my view this suggestion is grossly out of touch with the realities of crofting life and would have a disastrous effect on the livelihood of the ‘honest’ absentees described above. Professor Hunter’s succinct and otherwise helpful historical overview (RAE/S3/10/2/11) contains what he describes as ‘the simple solution’ to absenteeism: ‘that you can only be the secure tenant of a piece of land which you actually occupy’. Clearly, more distant tenancies were out of the question for the pedestrian or horse-drawn crofter of the 1880s, but this is scarcely a principle which stands up in these days of vastly improved transport and communications.

I would suggest that:
a) The stipulated residency limit of 16 km is too small.
b) Rather than requiring all applicants to present ‘good reason’ for living outside the residency boundary, the legislation should contain some assurance that active, working use of a croft (eg. as defined in section 20.3.5B) automatically frees such crofters from being categorised as an absentee.

This leads on to a related area of concern, also touched on by Professor Hunter in his additional evidence.

2. Multiple Tenancies

As a preventative to multiple croft ownerships/tenancies, Professor Hunter tentatively proposes another scale of registration charges: minimal for a single croft, up to the level of £250 per year per additional croft. For a tenant with five crofts, this would involve a massive £2500 cut per annum out of already scant returns. Professor Hunter does not make clear which issues so particularly concern him about multiple croft tenancies. Doubtless, it is a common occurrence. In the areas with which I am most acquainted, I know of few crofters who tenant a single croft: the result of a combination of
As Professor Hunter reports, the Napier Commission report of 1884 contained a recommendation that smaller crofts be amalgamated into agriculturally viable units. Such reorganisation – with its inevitable fresh cycle of ejection and loss – was rightly resisted by a population weary of being treated as redundant froth on the shore of civilised society. However, such proposals contained a noteworthy acknowledgement of the artificiality of the crofting system and the unrealistically small acreage of many of the plots of land so allocated. It is little wonder therefore, and it should attract no penalty or blame, that opportunities to accumulate more land for agricultural purposes have been taken up by many crofters as and when it has become available.

Much has been made of the role of crofting in maintaining a settled population in rural districts. I adhere to no economic theory, but would give weight to the opinion that 'the appropriate population for the Highlands [is] that number that [can] earn a “sufficiently attractive livelihood there when the natural rural resources [have] been fully developed”'. Land, like all natural resources, is finite, and it may be that the utopia of crofts for all wishful comers is no more possible in the egalitarian 2010s than in the deeply inequitable 1880s.

I comment on this issue in the light of the credence which Professor Hunter’s opinion carries as an authority on crofting matters, past and present. I suggest that no steps are taken to penalise the holders of multiple tenancies who make use of them for the genuine purposes defined in section 20.3.5B of the Bill.

3. **Duty not to misuse or neglect crofts**

In appearing to endorse the definition of genuine purpose as laid out in the Bill, I would express reservations about the following paragraphs:

(4) But where the crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—
   (a) the natural beauty of the locality of the croft; or  
   (b) the flora and fauna of that locality,  
the crofter’s so engaging or refraining is not to be treated as misuse or neglect as respects the croft.

(5) But where the owner-occupier crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—

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(a) the natural beauty of the locality of the owner-occupied croft; or
(b) the flora and fauna of that locality,
the owner-occupier crofter’s so engaging or refraining is not, for the purposes
of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

These reservations are expressed on the grounds that, in practice, the line
between ‘refraining’ from activity and active neglect may be very difficult to
quantify. In my opinion, permitting crofts to fall into disuse on environmental
grounds sets a dangerous precedent. This is not to condemn the
conservation of limited and defined areas as pioneered by the Rural
Stewardship Scheme.

SUBMISSION FROM KIRSTY MACLEOD

As a crofter’s wife and former staff member of Assynt Crofters’ Trust, I have
been following the developments in the Croft Reform Bill with great interest.

There is one issue that does not appear to have been addressed in the Bill,
namely the limitations of the current Croft House Grant Scheme.

I have read that crofters are to have interest payments reduced by half on
croft house loans to 3.5%. This will be very welcome news to those who have
benefited from the former Croft House Grant and Loan Scheme. In this area,
back in the 1980s the combined total amount available of £29,500 was
sufficient to build a house. Latterly crofters were able to fund the balance
required to build through mortgage financing, if the house site was decrofted.

The loan at a fixed rate of 7% became relatively expensive compared to
mortgage rates, and the loan element was scrapped several years ago,
replaced with a grant only scheme, the Croft House Grant Scheme, with three
levels for different areas. While the grant scheme is very welcome, the
amount represents a fraction of total build costs and the removal of the loan
scheme has meant that many crofters are unable to build a house on their
croft.

In order to obtain mortgage financing, crofters have no option but to decroft
their proposed house site as lenders will not consider a mortgage on land
under crofting tenure. The clear advice from CHGS is that if decrofting is to be
applied for, any application should be delayed until after the grant is
approved. A Decrofting Application takes a minimum of 12 weeks to be
processed, longer if there are representations, and for a bareland site requires
at least Outline Planning Permission (or Planning Permission in Principle as it
is now called) before it can be considered, which itself takes at least 3-6
months.

My husband first applied to the CHGS in September 2006. An offer letter was
issued in March 2007, with work expected to commence within six months
and the first claim to be made within twelve months. For various reasons we
had to delay, and because of the relatively short timescale in the offer we
were advised that we would have to withdraw and reapply. A further application was made in October 2008, and an offer letter arrived two months later in December 2008. He then went ahead with the Decrofting Application necessary in order to obtain mortgage financing, and we decided on a house kit so that we could be ready to apply for detailed planning and building warrant.

In the interim came the problems in the financial market making it extremely difficult to obtain a mortgage, particularly for those who are self-employed as we both are. It has always been more difficult to obtain a mortgage for a self-build project if you are self-employed, but there were ‘self-certification’ mortgages available at a higher rate of interest for irregular incomes. Unfortunately these products were withdrawn from the market and lenders are now even more reluctant to lend for a self-build project if you are self-employed. Again because of the short claim window on the grant offer we are not in a position to take it up, and will therefore have to reapply again if and when we are able to access financing. In the meantime the Decrofting Order will lapse if we do not go ahead and purchase the site from the estate, and if the planning permission also lapses and we could find ourselves in the position of having to start all over again. There are costs associated with all these processes and, because the system is so complicated, it is difficult to decide what is the best thing to do.

We have invested significant sums in improving the croft in Balchladich – the main reason for not being ready to proceed before – and our greatest wish is to be able to live there now. We did live on the croft in a caravan for several years, renting empty holiday homes in the winter months. Following the birth of our son in 2007 we were lucky enough to be allocated a housing association property nearby. However, for reasons of stock management and security as well as for the future benefit of our family, we would much prefer to be living on the croft. This would also release one of the four Albyn Housing properties in Stoer for another family to live in the area.

My point is that the system as it stands is complicated and cumbersome and is only of real benefit to those who have access to building funds without requiring a mortgage. (It is understandable that crofters have been selling house plots for development as this is often their only way of raising capital.) While the move to reduce the loan rate for those who have already benefited from the scheme, it does nothing to assist those, like ourselves, who find themselves unable to build a house on their croft. I am sure there are many others in a similar position throughout the Crofting Counties, and the low take up rate for CHGS seems to confirm this.
With an increasingly ageing population and high percentage of holiday homes, North Assynt is particularly vulnerable. If rural areas like this one are to have any chance of retaining younger people and families, the reintroduction of a loan scheme for crofters would be a major step in the right direction.

Kirsty MacLeod
3 February 2010

SUBMISSION FROM JIM MACMILLAN

The change of name is a political stunt and will have a huge cost for very little gain no reasonable explanation as to why this expensive change should occur.

HIE have had responsibility for crofting development since 1st April 2009 and have done nothing to show that they are in a position do carry out this responsibility this work should be taken back over by the crofters commission who should have crofting development officers in place living in the areas to fully understand the needs of crofting.

The registration of crofts seems to be an issue that is going to cause high costs and a lot of confusion Highland solicitors will be delighted if the proposal goes ahead as the works involved in this registration process will in most cases require a solicitor and detailed maps to registration standards Landlords will incur high costs in this process as well.

How can we ensure that costs do not increase in the future Solicitors like government officials seem to be able to turn any legislation around to ensure costs will rise.

The recovery costs of fees for work that should have been done by the crofter’s commission previously appears grossly unfair. The registration cost of around £80 will be small compared to the cost of drawing up a map and surveying the area The majority of crofters will need to employ someone to carry out this work, average cost of maps for small croft £180 to £250.

The system of registration has not been addressed sufficiently and the time that it will take to get a competent usable register in place is far too long. The ranking system will see costs of appeals and disputes rise for certain individuals based on the fact that a neighbouring crofter has submitted an application earlier even if that registration is incorrect there should be a way of recovering costs from crofters who submit registrations that prove to be incorrect.

Do Common grazings shares have to be registered some crofters may only have common grazings shares.
I would consider that those drawing up the details on the registration process have little experience of the time and work that goes into drawing up agreements when crofts are purchased and the mapping requirements are very similar to those of the purchase process but with more consultation with neighbouring crofters and more people to object the process seems very complicated and is going to be much more costly than has been shown by the figures in the Bill as it does not take account of fees for mapping and sorting out disputed areas.

I am glad to see that absentee action on tenants and owner occupiers is high on the list of objectives and only hope that the commission will take action. The neglect action should not affect working crofts as anyone claiming subsidy will have to meet good agricultural practise requirements.

One subject not mentioned in treating tenants and owner occupiers in the same manner is the subject of economic status tests for owner occupiers, these should either be done away with or introduced across the board this would do away with much of the needless legislation work carried out by the commission.

With the demand for crofts and the legislation introduced to allow new crofts I am unsure of the gain there will be in the requirement for the Crofters Commission to approve division of purchased crofts. This would appear to be creating a lot of work for very little gain as any such division should have to be registered.

Additional costs and time for a crofter who will most likely be selling part of a croft to make investment in the croft.

The decision to allow the commission to divide a croft under section 26G is a dangerous precedent why should government bodies be allowed to take over land and divide it up and let it out to whoever. The land should be returned to the landlord and the landlord should be responsible for the reletting the commission do not have a good record in this type of situation and I would point to Sanna in Ardnamurchan a prime example of what happens when the commission has been involved in reletting.

The letting of owner occupied crofts is a useful addition in ensuring that croft land is properly used however the commission must ensure that after a long term lease has finished that the owner occupier either becomes resident or sells /re lets the croft on a full tenancy basis if not all that will happen is that there will be no crofts coming onto the market for new crofters and that in turn will keep the cost of crofts very high. Where an application is made to let a croft on a long term lease and the owner has no plans to return to the croft/ area it should be refused and the owner asked to sell or re let the croft on a full tenancy. There are many owner occupied crofts in this area where the owners have not lived in the area for 30 or 40 years and will never return to the area.
Paragraph 68 needs to be tidied up for grant/environmental scheme purposes. Many of these schemes need at least a 5 year agreement and there should be legislation to allow this type of lease where more than 5 years is available to be eligible for LMO/SRDP funding.

The change from 5 year to 10 years for claw back for the landlord is a most unwelcome move. This will have 2 main effects, it will reduce the number of crofts being made available and will keep the price of crofts being sold high, it will also reduce the amount of money that is being invested in crofting as anyone who has bought a croft will be unable to sell part to invest in the infrastructure of the croft.

The proposal to have elected members will no doubt cause problems and it will be interesting to see how many of the registered crofters vote the membership of the Crofting Federation which is only around 12% of the eligible crofters and only a small percentage are active. Have any figures been done estimating the numbers of crofters expected to vote as the cost would appear to be very high if a figure of 8 to 10% are all that vote.

Has there been any work done on how the 6 areas are to be split and will this be affected by where the 3 non elected members are from? Additional information on how this is proposed to be operated should be given before the end of the consultation period.

Jim MacMillan
9 December 2010

SUBMISSION FROM JAMES MCPHERSON

I would like to introduce my submission with 2 quotes:

When asked to explain the success of his designs an early pioneer of aviation said: “I simplicate and add more lightness”

An aside by a legal professional at a meeting I attended to consider this Bill: “I view this legislation as my pension”

Please bear in mind both quotations in your consideration of this Bill.

Only PART 2 of the Bill, THE CROFTING REGISTER, will apply to all crofts at some time.

The only indication of the cost of placing a croft on the CROFTING REGISTER so far is the suggestion that the fee payable to the Registers of Scotland will be £80. This will apply to all crofts.
With about 18,000 registered crofts this will remove about £1.4 million from crofting.

An owner occupier will have a registered title and, particularly if the title is on the Land Register then the map and bounding description of the croft will be readily available. The owner occupier will submit the map and title sheet to the Crofters Commission along with the fee payable to Registers of Scotland and, having checked the information contained in the application, the Crofters Commission then pass the information to be entered in the CROFTING REGISTER.

A crofter registering a croft will have to provide a map to a standard acceptable to the Keeper at a ball park figure of £200. A ball park figure for employing a surveyor is £600. Even if the figure of £600 applies to only half of tenanted crofts, there would be about £7 million removed from crofting. The advantage of employing a surveyor is that the boundaries would be determined as such and not with reference to such things as management fences.

It is accepted that the Register of Crofts held by the Crofters Commission is neither accurate, current or map based. By what criteria will the Crofters Commission assess an application? In particular can the Crofters Commission, by approving a map submitted by a crofter, be seen to be determining the boundaries of a croft, a jurisdiction reserved to the Land Court.

In the interests of efficiency the Crofters Commission and Registers of Scotland should operate a system comparable to the Automated Registration of Title to Land. Solicitors using eRegistration will not be working for free. There is no mention of the level of fee the Crofters Commission will charge to progress an Application.

I would urge the Committee to pin down the costs, particularly to a crofter, of entering a croft on the CROFTING REGISTER and consider this against the benefit to that crofter. Bear in mind that a croft being worked by a family whose forebears broke in the ground with backache, heartache and a spade – the ground not being fit for a plough – will be well aware of the croft boundary.

Not in the Bill

1 Schedule 2 of the Crofters (Scotland) Act 1993 – the Statutory Conditions

10 The crofter shall not do any act whereby he becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985.
Such a condition has been incorporated into the Crofting Acts since 1886. It is no longer equitable in the present day when it is possible to be discharged from bankruptcy in one year - though payments may continue for three years - that a landlord has an absolute right to remove a crofter under Statutory Condition paragraph 10.

There may have been an argument in the past that such a condition was necessary to protect the landlord’s interest as far as the payment of rent and the cultivation of the croft was required since the crofter could not trade as a bankrupt. In the present day so long as the rent is paid and the croft is cultivated or put to other purposeful use then this condition is not required to protect the landlord’s interest.

If the condition was deleted it would not affect the actions of the crofter’s trustee in bankruptcy.

2 Following on MacDonald v West Minch Salmon Limited and Another it became necessary to introduce a test of reasonableness into the Statutory Conditions –paragraph 11A.

11A Nothing in paragraph 11 above shall be held to allow, or require the crofter to allow, the landlord, or any person authorised by the landlord, to exercise unreasonably a right enjoyed by virtue of that paragraph.

This test of reasonableness is specifically only applied to Statutory Condition paragraph 11.

Bearing in mind the second quotation above it should be put beyond doubt in the Bill that a test of reasonableness be applied also to landlords and neighbouring crofters enforcing a written condition under Statutory Condition 9.

9 The crofter shall not violate any written condition signed by him for the protection of the interest of the landlord or of neighbouring crofters which is legally applicable to the croft and which the Land Court shall find to be reasonable.

While the Land Court has found the written condition to be reasonable, it is the exercise of the written condition which should be made subject to the test of reasonableness – or put it another way – our learned friend of the second quotation will be earning his pension by arguing that because paragraph 11A is restricted to paragraph 11 then it was clearly the will of Parliament that there should be no test of reasonableness when a landlord or neighbouring crofters enforce a written condition under Statutory Condition paragraph 9.

James McPherson
SUBMISSION FROM DIANA MOFFAT

Part 2. Section 7 - I agree with a map based register which would facilitate applications for registration.

Part 2. Section 3 - I agree that there should be recognised boundaries? Who would map these? Who would pay for this to be carried out.

Part 2. Section 16 - Who will be responsible for these fees?

Part 2 - Is it necessary to have 2 registers? (i.e. Edinburgh based and also The Crofters Commission?). Would appear to be duplication.

Section 20. Para. 40.

Absentee Crofters - This should not be a problem where the crofter has made provisions for their croft e.g. use of croft for tree planting in a planned and managed way: encouraging flora, fauna, and bird life (with frequent visits by the crofter).

Part 3 - Section 22-51. This would require further consultation.

Page 30 - Para. 141 - If a tenant becomes an owner-occupier, what would be the time span for allowing the purchase of the croft?

Thank you for the opportunity to comment on this bill.

I trust these comments will be taken into consideration.

Diana Moffat (Mrs).

SUBMISSION FROM CATRIONA MURRAY

I understand from an article in the Oban Times of 14 January 2010 that your committee is currently seeking views on the general principles of the above Bill.

Absenteesim

I am responding in relation to my 2.5 acre croft from which, in legal terms, I am absent. My family have been there for 160 years with the croft handed down through the generations by direct blood line. I am the first crofter to be absent.

The croft is officially designated as poor ground and I agree with this assessment.
Like so many crofters lack of employment was the root cause of my absence. Our plan was always to retire to the croft when my husband retired. All our holidays were spent on the croft helping family etc. No foreign or other holidays for us as we tightened our belts in many ways with the hope of early retirement for my husband. Finally our dream was becoming reality as we set everything in motion to return.

Our hope to upgrade the old house literally built by my grandfather 110 years ago was shot down in flames by local architects who advised that a new build was the better option for 21st century living.

Unfortunately my husband’s early retirement coincided with my first encounter with cancer. Nothing daunted I was planting potatoes on the croft, as we have done every year, within 6 months of my operation and follow up treatment.

The new house was an invigorating scheme which greatly helped my attitude to health matters.

It took 8 years from the first approach to the architects to completion of the building. The delays were numerous and varied: we had to build a new access road as required by the Roads Department at a cost of £30,000 which also required a Deed of Servitude as this road crosses over another tenanted croft: a section 75 agreement was required before planning approval was granted.

Our new home was built by local Skye builders and tradesmen who have thanked me so often for allowing them to stay on the island as a result of our personal funding securing jobs for them – they still pop in occasionally for coffee and a catch up.

My second (unrelated cancer) forced us to revise our plans as it is, according to medical advice, better to stay with your first site of treatment. Keeping an Edinburgh address ensures my uncomplicated access to the Edinburgh Cancer Care Centre where I am on long term follow up. While I have uncomplicated my health issues by this decision I appear to have certainly complicated my crofting issues.

**Discrimination**

“Absentee” is nowadays used offensively. The implication is that being absent equates with disinterest, remoteness and damage to the community. I am absent legally but the anomaly is that I spend more time and do more constructive work on my croft than many who legally are not absent.

Villifying one section of a crofting community against the other is surely discrimination. The Scottish Government has indicated that the fundamental rights of crofters: security of tenure, succession, fair rents and the value of improvements made at crofters’ expense **should only be enjoyed by those residing within statutory distance from the croft.** (Ref Future of Crofing Team letter dated 13 August) I would suggest that this is an infringement of
human rights and discriminatory. Good luck to those who are eyeing the European Courts. Bullying, enforced action will increase this likelihood. Working with people rather than against them surely produces better results.

**Biodiversity**
I have 160 years of knowledge handed on through generations of every nook and cranny on this croft and my children and grandchildren who spend all their holidays on the croft are willing learners.

Wild flowers are plentiful – I have ensured their survival and registered one endangered species. I counted 92 daddy longlegs clinging onto the house wall last October/November (some were mating).

We were all thrilled at the return of the house martins. Autumn brings huge flocks of redwing and fieldfare – I am amazed at their return every 27th October. We have visits from owls, buzzards and kestrels and I believe it was a red kite which flew past the kitchen window in autumn. I provide suitable habitat for their prey. There is a fully grown fur tree worryingly near a building but home to goldcrests so I have planted similar trees elsewhere in the hope of encouraging the goldcrests “to spread their wings”.

I have an otter run from the river at the bottom of the croft through to the top. Although I have yet to see the foxes they left their mark when my neighbour lost all his hens. Large numbers of bumblebees (I do not know all the types), butterflies, moths, caterpillars, frogs, toads etc abound along with millions of midges but then they ensure wonderful aerobatics from our bats (the grandchildren are fascinated having associated bats with some spooky connection at Hallow’een). I have purchased a bat box from RSPB to see if it is of interest as I worry about the state of the old sheds on my croft. Bats like otters are another protected species.

**Crofting Register**
I wonder if this issue has been fully thought through?

From a finance point of view, I have concerns about both the cost to the individual be it the originally proposed £250 or the greatly reduced figure claimed to have been conceded under pressure from the Scottish Crofters Federation and the cost to the public purse at a time of extreme financial pressure. Presumably if the Registers of Scotland need £250 to meet the cost of registering a property, then if the fee is reduced to, say, £100 the Scottish Government will presumably have to subsidise the difference ie £150 x 18,000 crofts = £2.7m. The Scottish Government has already agreed to meet the Crofting Register capital start up costs of between £907,000 and £1,387,000. It is doubtful if this figure will come in at anything less than £2.5m+. This suggests a total cost of around £5.2m for a register that does not appear to have much support and will probably take years to reach a meaningful level.

Of more concern should be the potential for argument and division within the communities as a result of boundary disputes as parties are forced to employ
surveyors to produce acceptable plans to submit with their registration applications and these plans are disputed by their neighbours. I know two siblings who have fallen out over a piece of land 12 feet square. If that happens (and it does) amongst those related by blood imagine the free for all where there are no niceties of blood ties.

I trust that these comments will be considered by your committee.

Catriona Murray
19 January 2010

SUBMISSION FROM NATIONAL TRUST FOR SCOTLAND

The National Trust for Scotland (the Trust) welcomes the opportunity to respond to Stage 1 of the Crofting Reform (Scotland) Bill. We believe the provisions in this current Bill are a significant improvement on its predecessor in 2007. We are encouraged by the many positive regulatory and governance proposals in this Bill and a collective desire across the political spectrum to address the issues facing crofting today. If the proposed legislation is underpinned by well-targeted funding, it will constitute a major push forward in securing the future of crofting and its associated public benefits.

A summary of our main points is given below with more detailed and additional comments provided in Annex 1.

SUMMARY

1. any increased regulation of crofting must be matched by effective financial support for crofting activities, if the objectives of this Bill are to be achieved in practice;

2. we continue to believe that the interests of the wider crofting community and the crofting tradition would be best served by fully or partially removing an individual’s right to buy;

3. we fully support the strengthened grounds on which both the Commission and the Scottish Land Court respectively can reject an application to decroft or resume land;

4. we urge the Scottish government to put in place clear guidelines to help interpretation of the new legislative clauses on which these are to be based;

5. we support the proposal for a more inclusive and accountable membership of the Commission but believe its composition should ensure that landowners and wider crofting community interests are properly represented;
6. the new duty placed on the Commission to take action in respect of absenteeism and neglect by both tenant and owner-occupiers is a significant and welcome step forward;

7. whilst we welcome the increase to 10 years in the clawback period from proceeds of a subsequent sale of decrofted land, we believe a more fundamental review of the basis of croft valuation is required in practice;

8. it is essential that the information to be included in the Crofting Register is comprehensive (some sections listed in the draft Bill have not been taken forward in the Bill);

9. we urge the registration process to be fully or partly funded within a specific time-frame so that some form of systematic registration can take place alongside individual trigger mechanisms;

10. the issue of charging for regulation of crofting needs careful examination by the Commission, particularly where there is a dispute.

We would be happy to expand on any of the points made in this response and to engage with any future evidence-taking during the passage of this Bill.

ANNEX 1: Detailed comments on the Crofting Reform (Scotland) Bill:

The Future of Crofting

The stated objectives of this Bill are to put in place a robust regulatory and governance framework for the future of crofting and to ensure that crofting continues to contribute to sustainable economic growth in Scotland’s remote rural communities. We believe the proposed legislation will go a long way to addressing the former, but remain concerned that there is insufficient emphasis on effective support for crofting. On the latter, crofting contributes to far wider outcomes than ‘sustainable economic growth’. The remit for the Committee of Inquiry on Crofting was to develop a vision for crofting, having analysed the extent to which crofting contributed to: sustaining and enhancing the population; improving economic vitality; safeguarding landscape and biodiversity; and sustaining cultural diversity. This breadth of outcomes should be reflected more explicitly in this Bill.

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7 Implementation of this should be coupled with financial incentives to crofters to carry out their obligations under this new Bill.

8 The statement that crofting continues to contribute to ‘sustainable economic growth’ is inconsistent with the five principles of sustainable development agreed by Scottish Ministers. The economy must only be developed within environmental limits that lead to achieving a healthy and just society.

http://www.defra.gov.uk/sustainable/development/what/principles.htm)
Crofting cannot be sustained by legislation alone and increased regulation needs to be matched with a properly targeted crofting support system on the ground. Existing measures to encourage crofters to undertake agricultural work on their crofts are woefully inadequate, especially in the context of existing fuel costs, distance from markets, low productivity in general and the small scale of most crofts. We believe there is currently little in the Scottish Rural Development Programme that is going to appeal to the majority of crofters and this gap must be filled by putting in place financial incentives that are simple, straightforward and properly targeted.

There is a pressing need for such a balance to be struck, putting in place a carrot as well as a stick. By itself, increased regulation intended to stimulate active crofting paradoxically may lead to the disappearance of crofting. If crofters are forced to abide by the statutory conditions or lose their tenancy then it will simply be more attractive for many to walk away from it altogether, or force the Commission to implement the regulation and take the croft away. As a result we may be left with large areas of croft land that nobody wants. A basic financial package to stimulate good crofting practices must be put in place and we call on the Scottish Government to address this as a matter of priority.

Speculation of Croft Land

Speculation of croft land is arguably the most contentious issue facing the future of crofting today. Steps to diffuse the situation have been controversial and complex. Recent attempts include: the proposal and subsequent dropping of the ‘Proper Occupier’ amendment to the Crofting Reform (Scotland) Bill 2007; the suggestion by the Committee of Inquiry on Crofting that local crofting boards should have the right to suspend the right to buy where appropriate; the proposal and subsequent dropping of the recent occupancy requirement for houses built on decrofted land; and the current options in the present Bill. The Trust fully supports the proposal to strengthen the grounds on which both the Commission and the Scottish Land Court respectively can reject applications to decroft or resume land (further comments on this below). However, we believe that a simpler, albeit contentious, measure would have been to completely or partially remove an individual’s right to buy, thus openly asserting the interests of the wider community and the crofting system itself over the individual’s. For too long this issue has gone largely unaddressed.

There may be an analogy in the right-to-buy policy in relation to council houses. We note that this was recently branded ‘a dreadful legacy’ for housing in Scotland by the current Housing and Communities Minister. Steps have already been taken in the current draft Housing (Scotland) Bill to end the Right to Buy for new social housing tenants. In addition, Scottish local authorities were given pressured area status powers under the Housing Act 2001 which allows them to suspend the right-to-buy where there is a

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9 Scottish Government Press Release issued by Alex Neil (10/7/09) in response to a Shelter Scotland report which shows that the number of housing association and council homes for rent is at its lowest for 50 years.
shortage of affordable rental property. Whilst we acknowledge that crofting is unlikely to be the most appropriate means of delivering affordable housing for all in the Highland and Islands, the situation may be analogous in that such an individual right has had a cumulative and detrimental effect on a tenanted sector.

The current government has demonstrated its ability to be bold in relation to the circumstances outlined above. Given the cross party political will to safeguard crofting’s future we believe the opportunity to tackle this issue head on can still be grasped.

Disposal of land, resumption and decrofting

The strengthening of the ability of the new Commission to reject applications for decrofting and the ability of the Scottish Land Court to reject applications to resume land in Part 5 of the Bill is to be fully supported. In particular we commend the move to take into consideration any effects on the environment, landscape and the social and cultural benefits of crofting, a recognition of the value of these elements and the need to assess the impact of any potential development upon them.

Subsections (1A and (1B) of Section 25 of the Bill present the Commission and the Scottish Land Court with a new set of complex and interwoven issues to consider and one can foresee some difficult casework as a result. It is essential that clear guidance on the interpretation of these legislative clauses is provided to reduce uncertainty and to allow for an agreed set of criteria to be established against which cases can be tested. A prerequisite for this is a shared understanding by all involved of the objectives that need to be met to sustain crofting communities. This includes their associated cultural and social benefits, the wider communities in which they are located, together with an understanding of landscape and environmental issues and potential negative detractors and positive enhancers thereof. This will be no easy task and calls for joined up thinking and planning by the Commission, Highlands and Island Enterprise, local authorities and other stakeholders.

New powers allowing the Commission to refuse a decrofting application even where planning consent has already been given, is a significant step forward. This move will untie the hands of the Commission and facilitate proper consideration of crofting interests in relevant cases.

The increase in the clawback period from proceeds of a subsequent sale of decrofted land from 5 years to 10 years is also welcomed. However we believe a fundamental review of the basis on which crofts are evaluated is required in practice and would constitute a fairer and more up-to-date approach to this issue. The basis of croft valuation could be changed from a multiple of the rental to a proportion of the market value and should apply to all sites, including house sites. This proportion might logically be 50%, in line with the share in development value to which the crofter is entitled. The reasoning behind this is that the economics of crofting are currently driven by the market development value of croft land rather than by its unimproved
agricultural value. The latter was originally used as the basis for establishing 
croft rentals, but this approach is now seriously outdated. Another alternative 
approach would be to increase annual rental figures to reflect the 
development value of croft land. Under either scheme any resulting increase 
in rent or purchase price could be paid into a local community fund to be used 
to build up an endowment for crofting projects in the future.

Duties of Crofters and Owner-Occupier Crofters

We welcome provisions to ensure that owner-occupiers and tenant crofters 
are to be treated in the same way. The requirement that owner occupiers 
must also be resident on, or within 16km, of the croft and to put the land to 
productive use will go a long way, if enforced, to addressing absentee and 
neglect issues. The placing of a clear duty on the Commission to take 
enforcement action where duties are not being met is a significant step 
forward from the status quo and we would strongly advocate that 
investigations need be to be carried out without prior notification.

The New Crofting Commission

The Trust welcomes the move to a more representative and accountable 
Commission through direct elections of crofters The abandonment of the 
proposal to establish an Area Committee network and instead to directly elect 
a majority of crofters onto the Board of the new Crofting Commission is not 
surprising given the widespread concern over composition of the Committees 
and perceived difficulties in avoiding favouritism and local disputes at an Area 
level.

However we have some concerns over its composition. The current proposal 
that a maximum of six members are intended to be registered crofters with the 
remaining three members (including the convenor) to be appointed by 
Scottish Ministers does not adequately reflect the landlord-tenant relationship 
which is at the heart of the crofting system. The landowner, be they private or 
community Trusts, should not be excluded from this decision-making process 
and should be allocated a voice in this forum. The proposal in the draft Bill 
that appointed assessors should sit on Area Committees to ensure wider 
crofting interest such as landlords and community trusts must be replaced 
with an equivalent mechanism for the new Commission.

Furthermore, the increased recognition of the need to take into account wider 
community interests as well as issues such as landscape and environment 
during the course of the Commission’s regulation work should be reflected in 
its membership.

Commission charges for regulation of crofting

Whilst the Bill provides the Commission with the power to fix and recover 
charges for the service of processing regulatory charges, we understand that 
no decision has yet been taken as to the type of regulatory applications for 
which the Commission might charge, nor what proportion of costs the
applicant might be expected to meet. We re-iterate our concerns on the need for this to be properly assessed, in particular where there is a dispute. If, as anticipated, a crofter may reasonably incur a charge if he is the principal beneficiary of an application, particularly one to decroft or apportion part of the grazings, then separate provisions must be made for contested cases. For example, where an opponent obstructs an application due to vested interests or personal grievance, costs may soar due to further administrative duties and possible hearings. In these situations a different approach is required. We urge the new Commission to examine this issue carefully.

Registration Process

As stipulated in previous submissions, we welcome the creation of a new map-based Crofting Register and agree that giving responsibility for the establishment and maintenance of this register to the Keeper of the Registers of Scotland (ROS) provides an important degree of legal certainty in the system.

However we continue to advocate the expediency of allocating sufficient resources up front to systematically establish all croft registrations within a time limited period and not solely as planned through individual regulatory triggers or voluntary applications. We believe the latter will be more expensive in the long term in relation to registration costs, Land Court Costs and a greater volume of regulatory work by the Commission. We believe a systematic approach based on a township by township plan would provide a good framework within which the Commission could carry out its business more efficiently and effectively. The RoS has already suggested that registering all crofts within a township on one registration would reduce costs through economies of scale and this would be mirrored at many other levels were such a system introduced.

If the estimated costs of between £1.4 and £2.3 million for the registering of crofts (excluding grazings) are deemed too great, we suggest some of the savings incurred from dropping the Area Committee network idea (eg the anticipated £100k per annum uplift on total spend on area Committee Assessors, £25k for first Area elections etc) be redeployed to introduce some form of systematic township registration alongside individual registration. This would allow for a faster coverage of registrations and offset longer term costs.

Content of Crofting Register

We are concerned that elements of the Content of the Register outlined in the draft Bill appear not to have been taken forward in the Bill as introduced to Parliament. The content of the title sheet (Section 10) misses out a number of elements listed in the draft Bill, namely: the name, location and extent of every apportionment, fixed and scaled against a map, any contract or agreement made between a crofter and a landowner, or order from the Land Court, concerning access to the croft; and any registered interest in a croft tenancy, such as a heritable security. If our understanding is correct we call
for this information to be re-instated. As outlined in our response to the draft Bill we would also like to see the extent, location and relevant shareholding in any and all grazing areas included and the location, extent and date of any decrofted land or resumption pertaining to the croft or its share in any grazings.

If the information on the new Crofting Register is not fully comprehensive then there is a risk of a de-facto ‘dual registration’ operating in practice. The Bill’s Policy Memorandum confirms the Commission will need to keep an administrative record in respect of each croft. If certain details such as those mentioned above are omitted these will need to be kept on the old register too. This will render it more than an administrative record and negate the objective of ultimately replacing the old register with the new one.

We fully support the Government’s proposal to pay for the mapping and recording of all common grazings across the Crofting Counties, expected to be completed within 4 years. As stated in our submission to the draft Bill, the description of shares should include the soaming and any specific township rules.

The National Trust for Scotland
February 2010

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1 Future of Crofting Team member, public meetings, 2009
2 A 2008 Scottish Government report ‘Monitoring and Evaluating the Effects of Land Reform’ concludes that research on land issues in communities should be “strongly participatory”.
3 A Charter for Rural Communities, June 2007
4 In 2008 the OECD Rural Policy Review criticised Scotland for being centrally driven and top down in approach, to the detriment of local leadership and innovation.

SUBMISSION FROM MARY NORTON

FEEDBACK to RURAL AFFAIRS & ENVIRONMENT COMMITTEE
From hearing at Sgoil Lionacleit, Benbecula on 25/1/10 re Crofting Reform Bill

Our group (led by Peter Peacock w/Derek Flyn as recorder) was dominated by one speaker; also, a great deal of unproductive time was spent on the land register matter. Consequently, the most important issues were not fully addressed or discussed. At the close, the (undiscussed) assertion was that ‘a little speculation is no bad thing’ was made and found it’s way into the minutes. This did not represent the sense of the meeting and should be stricken from the record.

The issues of land sales, neglect and absenteeism are very closely intertwined. They stem from the same problem – lack of resources to keep the crofts viable. If a crofter wishes to improve his land, equipment, livestock or home, often his only recourse is to sell some land. Crofting is a regulated system, in which the land is in a sense held in trust for the community. Crofting provides many public goods from landscape and biodiversity
enhancement to population retention and preservation of Scottish indigenous music and culture. In support of this system and these goods, a modest yet accessible source of funds is essential. Yet in recent years, support has gradually disappeared: CCAGS now requires 100% up-front expenditure before claiming a 50% reimbursement: this kind of cash is beyond the means of many crofters, so the improvements do not get made. What small support that was available from HIE is gone; the SRDP is notorious for inaccessibility.

Crofters who wish to use their land properly and retain their way of life are between a rock and a hard place. A perverse set of counter-incentives have been allowed to develop, most probably through lack of understanding of the nature of crofting. But the result is croft neglect and land sales.

Land taken out of agriculture is gone forever and the community is diminished forever. Whenever land is sold it is usually the best – near the road, on a nice grassy spot or usable bit of in-bye. Even though ‘good’ land in the crofting counties does not rate very high on an absolute scale, it is all we have got. Crofting’s future whether for market gardening, livestock, specialty products, or just families depends on it.

So one cannot let such a statement regarding land speculation pass unchallenged – it is ALWAYS a bad thing, and in the case of crofting directly undermines what it pretends to preserve.

Thank you for your attention.

Mary Norton
4 February 2010
author of the Scottish National Course for Crofting

“sale” is here used to describe the effective result of feuing off a house site, as the outcome is identical.

SUBMISSION FROM MICHAEL AND DILYS OTTER

PERSONAL BACKGROUND. Dilys is tenant of a croft at Oldshoremore, Kinlochbervie, which we work together. It was totally derelict when we acquired it in 1995. We have put a huge amount of work and considerable expense into it, and restored the equally dilapidated former croft house, where we now live. We run a flock of N.C. Cheviot sheep (selling the lambs at Lairg) and we have a couple of Shetland beef cattle. We have also established a small but very productive orchard. We also have two successful holiday cottages, which are not (and never have been) on croft land. We find that the existence of this working croft enhances the appeal for our holiday guests. We would like to improve the accessibility of the croft for those of our guests who are disabled and need a wheelchair outdoors (one cottage is specifically designed for “walking-disabled” guests), and to make other improvements, but we are inhibited from doing so by the fact that, under crofting law as it stands
(and as it will be in future if this Bill goes through), there would be little chance of us or our successors being able to realise the proper value of the croft as now enhanced (or of the combined operation).

Michael is a member of the NFUS Crofting and Highlands & Islands Committee, but is writing here in a purely individual capacity. He is also a member of the SCF, but does not agree with any of the varied positions that the spokespersons for SCF have, successively, taken in relation to (a) the Shucksmith report or (b) the draft Bill.

It will be recognised that we are lay people, not lawyers, and do not claim to have a full grasp of the legislative detail. If we did, we could no doubt say more, and maybe express it better.

SUBMISSION

A. BASIC PRINCIPLE

1. Our fundamental position is that the Bill should be abandoned, and that Parliament should decide, instead, to take the radical step of agreeing that there be a wholesale repeal of crofting legislation, by means of a “Crofters (Freedom) Act”. The basic principle of such an Act would be to allow crofters the full ownership of their croft land (redefined so as to remove the present restriction to land which is “adjacent or contiguous” - see section E4 below) including therefore the right to dispose of it, if and when they so wished, to whoever they chose, and meanwhile to allow them to use it and develop it (or not) as they wished, subject only to the general law which applies to the population as a whole (including of course planning law).

2. This basic principle must be maintained in the Act, and not qualified or diluted to satisfy objections by those who may fear freedom or who may resent it being granted to others; or those who raise the familiar cries and red herrings of “speculation”, “unique culture” and so on. (See below for comment on these). Parliament and Government should be under no illusion as to the likelihood that there will be attempts to water it down, but these must be firmly resisted.

3. Clearly, there would be consequential matters to deal with in the Act, but these are not beyond the ability of competent officials and parliamentary draftsmen (clearly and firmly instructed to respect the basic principle) to handle. It is not, if we may say so, “rocket science”.

4. There would be interim measures to be dealt with, including the winding down, over a short time, of the Crofters Commission. The role of the Scottish Land Court would diminish. (This is a technical jurisdictional issue which is beyond our capacity to comment on. It, and other “issues”, must not be used as a means of thwarting the basic principle, but as details to be dealt with in complying with it).
B. REASONS FOR THIS PROPOSAL

1. The condition of the “patient” is dire.

Croft use, and in particular, croft agriculture, has been declining for many years. There are a number of causes of this. For example, the average age of crofters has been increasing relentlessly, and is now probably around 60. Again, lamb prices have been low. (The improvement in 2009, while welcome, didn’t even bring us back to 1996 in real terms). The consumption of lamb has decreased. However, underlying all this and other factors is the fact that crofters are tied hand and foot by a unique and suffocating set of laws and rules (both primary and secondary legislation and Crofters Commission regulations) and are subject to a unique judicial procedure in the shape of the Scottish Land Court (which was originally meant to be for the protection of crofters, where they could represent themselves, but has now become a morass of individual judgments which even specialist and well-paid lawyers have difficulty in understanding or applying).

We believe that, by liberating crofters from the burden of crofting law, and giving them full freedom as outlined here, croft agriculture would revive, to the benefit of local society, the agricultural industry generally, meaningful employment both locally and more widely (members will be aware, for example, of the impending closure of the Dornoch abattoir), and the nation’s food security.

2. We are in the 21st century, not the 19th.

It is now 124 years since the Crofters Holdings (Scotland) Act. This had as its purpose the protection of crofters, for whom the croft was an essential part-source of their livelihood, for whom the croft house was their essential home, and who were at the mercy of unscrupulous landlords. Economic and social conditions have changed radically. We have now progressed from the 19th to the 21st century, yet we are still bound by this Act, modified by a hotch-potch of additional legislation. The object of this is not so much “protection” as “control and restriction”. Even the “right to buy” the croft land, introduced in the 1976 Act, does not give a crofter a full right of ownership because it is subject to the ever-present threat of a forced assignation or a resumption if he were to act, or fail to act, otherwise than in accordance with the restrictions; and, more important still, it does not carry with it the free right of disposal. Furthermore, it is restricted to land which is “adjacent or contiguous”, and it is, also, strictly speaking, not a right to demand a conveyance (as is the case with the croft house itself), but a right to apply to the Land Court for an order. (see section E2 and E4 below)

3. Croft agriculture (and other croft use) is seriously undercapitalised. The Minister has complained that CCAGS is underused, and has repeatedly threatened to withdraw it if this under-use continues. What she fails to
recognise (or affects not to) is that crofters are simply unwilling to invest their share of the cost of the expense in question, when (a) the likely return, if any, is very low, but also (b) when, again, they would be putting their own money into an asset (their croft) which they cannot freely dispose of for proper value if and when they wish to. No-one in their right mind will invest any significant sum in those circumstances.

4. Absenteeism and non-use is an increasing problem. Making it mandatory for the Commission to tackle absenteeism, as the Bill purports to do, will not work, because (a) the Commission does not have the capacity to tackle the huge number of cases; and (b) the Bill makes so much allowance for discretion that they will need to (or have the excuse to) pick and choose. (Even when there have been glaring cases of inexcusable absence, they have failed to act). By contrast, if absenteees, or those who have no interest in working their croft, or are unable to do so, are able to sell on the “open market” (an expression which causes some people - who are happy to live and to conduct their business in a free market - to go running for their smelling salts and cry “speculation”), then those with initiative and a bit of capital (maybe provided by, for example, HIE under its development function) will be able to offer to buy their croft and create a more viable unit.

5. Fundamentally, this radical step of liberating crofters will encourage initiative and enterprise. As we have said earlier, those who lack these may resent others having the opportunity. Too bad. It will not force any of them out of their croft. (Of course, it will not “solve” absenteeism totally in the short term, but it should go a good way towards it. If further incentives are felt to be needed after some years, they can of course be considered).

6. The proposals in this Bill are divisive: they would set crofter against crofter, crofter against landlord, and crofters against other members of a community or township. (See sections C3 and D1 below, for example). We believe this is absolutely wrong, and totally against the principles of good government which this Government and others have applied in other areas.

C. RED HERRINGS AND MYTHS

1. “Speculation”. This is a cry sometimes raised by crofters against their fellow-crofters who apply to decroft for a house site. It ignores the fact that, out of the very small percentage of croft land that is decrofted annually for housing (we recall a figure of 0.5%) a significant proportion of cases are for occupation by the crofter himself or herself or a family member, and much of it may, in any case, be on land which is of poor quality. In the case of sale to a third party, the proceeds of sale are available for the crofter to invest in the croft (subject to the discouragement mentioned in B3 above) or in another enterprise.

2. “Unique culture” and related expressions. Traditional cultural activity finds its expression, for example, in local groups and in “Feisean” and Mods, and
elsewhere. It is not in any way dependent on the maintenance of a structure of tenant crofters. To pretend otherwise is a misuse of misplaced sentiment.

3. “Crofting community”. This is defined, in Part 3 of the Land Reform (Scotland) Act, to include all residents in a relevant area. (We appreciate that the purpose of the Act was different, but it is the principle that we are concerned with). However, in the 2007 Act (and now repeated in this Bill), it suddenly took on a completely new meaning, namely “all the people who occupy crofts or have a grazings share in a township”. This has the effect that a particular element (crofters and graziers) in a community can veto an individual’s plan for what he or she wishes to do with his or her own property (the croft). This not only represents an improper interference with personal freedom under - and therefore subject to - the general democratically enacted and applied law; it also elevates the right to interfere of a mere part of a population, - namely crofters, who may well comprise only a small proportion of the total population - above those who happen not to be crofters but who have just as much interest (and, more important, less vested interest) in what is proposed but whose views the promoters of this Bill evidently consider should be ignored. What a divisive way to treat a community!

4. the “philosophy and ideology” of crofting. The Minister is reported to have stated that crofters are “very content with the philosophy of crofting” and that there is “broad agreement about ...the ideological or philosophical basis of crofting”. (RA and E Committee Official Report, 20 January 2010, Col.2294). We are not aware of crofters being asked about the ideology or philosophy of crofting, nor of their being told what the Minister, let alone the Cabinet Secretary or the Government at large, means by this. However, the Minister’s adoption of these terms in support of what she proposes suggests an outdated collectivist outlook. A policy and stance driven by a collectivist ideology has, for us, unsavoury echoes, and also runs the risk of obscuring objectivity and practicality and the fact that what we are dealing with is individuals and their needs and opportunities, not with an “ism”. (The substitution of the word “Crofting” in place of “Crofters” in the title of the Commission - closely following on the changes in s 1 of the 2007 Act whereby its historic function** of “promoting the interests of crofters” was changed to “promoting the interests of crofting” - is a further indication of this). ** (ever since its establishment under s.1 of the Crofters (Scotland) Act 1955). It seems to be a case of: “Never mind the crofter; feel the ideology”).

D. THE BILL - SOME SPECIFIC DETAILS

While in no way moving away from our basic submission, we comment on a few particular aspects of the Bill as follows:

1. Register.

a. This is unnecessary. The Crofters Commission has records which are sufficient for all normal practical purposes.
b. It is certain to cause a lot of expensive and disruptive “aggro” between crofter neighbours and also between crofter tenants and their landlords, by bringing to a head issues which would otherwise lie dormant or not even be known to exist. A registration application will in effect constitute a challenge to one’s neighbour or one’s landlord. (Registration applications by a landlord, conversely, will be a challenge to his tenants). The other party will have only a limited time to respond before the application is approved and the boundary or right in question made definitive. It is a recipe for dispute and expense. The registration process also threatens to be complex and expensive (despite the suggestion that fees may turn out to be lower than at first proposed). It will also take up to two generations to complete. It must be dropped. The present Land Registry will be available for crofters when, as we have proposed, they are given the full ownership of their land.

2. Changes to the Crofters Commission

a. The proposed change of name is unnecessary. It gives the game away, that crofters, as individual people, have ceased to matter: what matters is “crofting” - an amorphous term which signals a collectivism that “had its day” in the Eastern “bloc” back in the last century).

b. Partial election of Commissioners. This is a pretence of “democracy”. It is a bad idea. It will set crofters in judgment over their fellow-crofters. It will encourage those with a particular “agenda” to stand for this position. There are already crofters among the present appointed membership of the Commission, who hold, or have held, office in the “Scottish Crofting Federation” and, while it may not be proper to suggest that the policy (as at any particular time) of the SCF may influence any such person’s view (or might in future influence the view of any “elected” member) with regard to any application or other issue (and we therefore do not suggest this), it is an important principle that objectivity and detachment must not only exist but also be seen to exist. The Bill does not even explain how the election will take place. This exposes the rushed and inadequately thought out nature of the Bill.

c. Much play was made with the fact that the most recent Act provides that most decisions by the Commission can now be challenged by appeal to the Scottish Land Court. While this is welcome in theory, in practice it is of little value in practice except to those who are sufficiently affluent and have no problem in risking very large costs, both for their own representation and for the Commission’s expenses if the Court were to reject the appeal. The Commission have made it clear that they will seek full recovery in such situations. The fact that the Act provides that any appeal is to be by “stated case” may suggest that it is to be by straightforward “one-off” written submission, but this is not the case, as the Commission and also the Court itself in a recent case have made clear. Five-figure sums could easily be involved, which the crofter would have to find from his own pocket. Further evidence in support of this can be provided. However, the Committee’s adviser will be aware of this.
The Commission is therefore still essentially a “law unto itself”, being, on the one hand, an NDPB (see below) and, on the other, unappealable as a matter of practice. The fact that, under recent legislation, even more of its decisions than before can be taken by officials makes the matter even worse. The proposed partial election provisions would not have any (at least, any positive) effect on this.

d. If the Commission were to continue to exist (which it would cease to do under our proposed Crofters (Freedom) Act after a short winding-down period), then we believe it should cease to be an NDPB and revert to being accountable to an individual Minister answerable to Parliament.

E. FULL OWNERSHIP

1. The most practical and “pain-free” way of achieving this needs to be worked out. The existing right to buy, in s. 12 of the 1993 Act, is there to be exercised (subject to amendment to take account of the important points in paragraphs 2 and 4 below), and the necessary provisions to give the full rights of ownership as referred to above could be “bolted” on to this. However, the mere exercise of that right has, as is well known, proved difficult, slow and deterrentingly expensive for some crofters, and there have been cases where landlords have resisted and employed delaying tactics. (We do not comment, here, on the merits of any individual case). It is very important, however, that this be looked into, and any appropriate provisions made so as to prevent the right of purchase being frustrated and to make it simpler.

2. However, as mentioned in section B2 above, the right is, strictly speaking, not a right to demand a conveyance (as is the case with the croft house itself), but a right to apply to the Land Court for an order. This needs to be put right, so the right to buy is absolute, as in the case of the croft house.

3. There is an alternative approach, namely to follow the Irish example of a century ago. This was referred to only in passing and pejoratively, in a single sentence, in the Shucksmith report, and was not even mentioned in the Government response. This has its attractions, and there may not be any justifiable objections by the landowning fraternity because the compensation principles already exist. It would mean the Government taking on the cost of compensation, but the cost of this would pale into insignificance when offset by the savings that would accrue from the elimination of red tape, the abolition of the Commission etc. that would follow from liberating crofters as we propose. “Human rights” objections might be made by individual landowners; but it would be for Government lawyers to look into this. We recognise also that this might be difficult to achieve politically.

4. A further issue that needs addressed in this connection is that, in the case of apportionments, the right (under s 12 of the 1993 Act) extends only to land which is “adjacent or contiguous to any other part of the croft”. This has caused numerous difficulties and given rise to ingenious and expensive argument on both sides. (For example, a local leading case with which we are
familiar, Ross v Trs. of Miss S N Barr (1994 SLCR 60) which makes interesting reading). This restriction needs to be removed, whether or not our basic principle is accepted.

Michael Otter & Dilyss Otter
29 January 2010

[An additional submission clarifying a number of points in the original submission is attached below]

We have realised that we need to clarify two particular comments in our earlier submission. These are in section C3, where we referred to the new definition of “crofting community”, and its effect under the current “collectivist” philosophy.

1. We stated, mistakenly, that the new definition is repeated in the Bill. It is not. However, it remains in effect, and would apply to the new Bill if this is enacted.

2. We also said that a particular element in a community is now able to veto an individual’s plans for what he or she wishes to do with his or her own property (the croft). (We cannot emphasise too strongly that it is his croft, and it is his business, and basically none of theirs). This is not strictly correct: we should have said “effectively veto”. We have two grounds for saying this. First, the recent legislation provides that any application by a crofter to the Commission may be objected to by any member of the “crofting community” (as defined), the grazings committee or a grazings shareholder. The clear inference and effect are that non-crofters in the community have no voice in this. Secondly, the Bill itself provides (in section 26H), that “if the Commission are satisfied that it is in the general interest of the crofting community …the Commission must make an order terminating the tenancy of the crofter unless they consider that there is a good reason not to.” (Our emphasis). It is obvious that, in practice, any idea of termination will not occur to the Commission unprompted. It will arise from pressure by other crofters and grazings shareholders. If the word “veto” is argued to be too strong, we would say that, in practice, if a concerted or orchestrated objection was made by such people, or even by a mere majority of them, the Commission would be virtually bound to be “satisfied” that it was in their “general interest”. It would certainly be under great pressure to do so, and we well know that they tend to bow to pressure of that sort. (That tendency may well increase if the Bill is enacted). Their scope to “consider that there is a good reason not to” would be extremely limited, even if they wished to exercise it; and the crofter would have a very hard, if not impossible, uphill job if they didn’t. Expensive, divisive and bitter litigation could ensue; or he would just give up.

3. The particular intentions or actions of the crofter in question, in relation to his croft, which are the target of objections by other crofters, and which may be their pretext for seeking termination of his tenancy - and thereby gaining it
for one of themselves - may, on the contrary, be welcomed by the non-crofter members of his community and may, indeed, be very beneficial to the community as a whole. However, their views are not provided for. So, his intentions or actions - or his right to the tenancy - can, in effect, be vetoed by this narrowly-defined element of the community, and thus, where there is only a handful of crofters, by a few people with a vested interest or a grudge against the individual. This is wrong.

Michael Otter & Dilys Otter
31 January 2010

SUBMISSION FROM THE PUBLIC AND COMMERCIAL SERVICES UNION

Scottish Parliament Publication Date: 10 December 2009

The Scottish Parliament's Rural Affairs and Environment Committee is seeking views on the Crofting Reform (Scotland) Bill which aims to tackle concerns over the rules and governance issues facing Scotland's often remote crofting communities. Measures proposed by the Bill include: constitutional change to the Crofters Committee; the creation of a Register of Crofts; the introduction of systems for addressing absenteeism and neglect by tenant-owner-occupier crofters; and an alteration to the grounds by which the Crofters Commission can reject applications to decroft. Comments by February 4 2010.

Legislation referred: Crofting Reform (Scotland) Bill 2009

http://www.scottish.parliament.uk/nmCentre/news/news-comm-09/crae09-s3-007.htm

Comments from PCS union

1. We welcome the retention at Section 10(2) of the current provision whereby civil servants can be provided to the Crofters Commission by the Scottish Ministers. We further welcome the statement contained in the Staff Q and A that “Scottish Government Main staff working at the Crofters Commission will continue to be civil servants retaining their current terms and conditions.” Our members would have greater assurance however if this statement was included as a legislative provision within the Act. We would also like Ministers to set out this commitment publicly.

2. We are concerned about the change of wording adopted from the current position where “The Scottish Ministers may provide the services of such officers and servants “....as the Commission may require...” to “...as the Commission consider appropriate”. We would question why this distinction is introduced.
The Q and A issued to staff acknowledges that the "Crofters Commission has experience and knowledge of crofting issues and it is important that this expertise is preserved." We would contend that the most effective way to retain this expertise and knowledge is to retain the status quo, therefore if the Commission require staff to carry out the range of functions included in the Act they should continue be provided by the Scottish Ministers.

3. We have concerns about the provision at Section 10(3) that “The Commission may appoint such employees as the Commission consider appropriate.” Our concerns centre on the potential disadvantages to the organization, staff and the public in operating a 2 tier staffing structure in terms of:

3.1 Resources
The concern here is the potential of requiring to divert limited public funding resources from front line customer service provision, to funding the provision of separate pay, pension and HR systems for Commission employees. This could have an impact on staffing levels, promotion opportunities and the quality of service delivery.

3.2 Promotion Opportunities For Existing Staff
The concern here would be if emerging vacancies were potentially designated as commission posts and not civil service posts. Current staff could be faced with the prospect of either retaining their civil servant status at their current grade with no promotion prospects within the Commission, or becoming employees of the Commission at a higher grade but losing both their civil status and their ability to apply for other promoted posts within the civil service.

3.3 Attracting Applicants From the Wider Civil Service
Under the current staffing arrangements the Commission have previously benefited from attracting staff from the wider civil service as vacancies arise, achieving the transfer of experience and ideas on which much of the effective development of individual government bodies depends in practice. Designating these posts as Commission rather than Civil service posts could potentially reduce the pool of potential applicants by being rendered unattractive to those staff who did not wish to leave the civil service to take up opportunities with the Commission.

3.4 Staff Morale
The impact of operating a 2 tier staffing structure with potentially differing terms and conditions, promotion opportunities, reporting arrangements etc. could potentially have a detrimental impact on staff morale.
SUBMISSION FROM EILIDH I.M. ROSS

Crofting Reform (Scotland) Bill 2009

Further to my response of 11 August 2009 to the draft bill, I would comment on the published bill as follows:-

Part 2 – The Crofting Register

As I stated in my response the draft bill, I support the Government’s proposal for a map based Crofting Register. As a solicitor in private practice, I spend a large amount of time researching croft boundaries and obtaining other information about individual crofts and townships. Whilst the process of first registration will no doubt be labour intensive (and therefore potentially expensive for clients), the end result will be a significant improvement on the quality and quantity of information available to us.

Whilst my client base is comprised largely of tenant crofters and owner occupiers, I have experience of working for estate proprietors. It is of some concern, therefore, that the explanatory notes to the bill mention that landowners are assumed to know the extent of the crofts on their estates. In practice, the majority of estate owners simply do not know the extent, and this assumption may well lead to problems at a later date.

I welcome confirmation that the Keeper’s indemnity will now be available in relation to the Crofting Register, and also that the fees for first registration have been reduced.

Finally, I would suggest that Section 11 ought to be amended to increase the number of persons who are notified of the registration. Some townships are organised in what may seem to be an unusual fashion, with various parts of one croft being interspersed with non croft land or croft land belonging to a different croft. The current provisions would not therefore ensure that all persons with an interest were notified, which may create difficulties and confusion at a later date. By notifying all tenants or proprietors within a particular township of the application for registration, this problem could be averted.

Part 3 – Duties of Crofters and Owner-occupiers

In general I support the provisions in this section, in particular those in relation to the definition of “owner occupier” and the division of owner occupied croft land (section 21), and short lets (section 24). It is not clear to me how these
provisions could relate to non-natural persons who become owner occupiers, as it sometimes the case.

Part 4 – Further Amendments to 1993 Act
I welcome the provision in section 25, which amends section 14 (3) of the 1993 Act and has the effect of extending the time period during which landlord’s clawback applies to disposals of croft land.

I note that the loophole created by MacDonald v Whitbread (1992 SLT (Land Ct) 36) and 1992 SC 479) has not been addressed by the bill. I addressed this point in my response to the draft bill, and I am aware of other practitioners who did similarly. Furthermore, the Scottish Crofting Federation have indicated that their membership do not oppose the end of the ‘nominee’ procedure.

Addressing this anomaly would undoubtedly reduce speculation on croft land, and it would be a pity if this opportunity was not taken by the Government, particularly given the evident consensus on the matter.

I trust that these submissions are helpful to the Government. I am happy to discuss any aspect of them further.

Eilidh I.M. Ross
02 February 2010

SUBMISSION FROM SCOTTISH CROFTING FEDERATION (ISLE OF TIERE BRANCH)

We wish to make the following comments with regard to certain sections of the above Bill.

New Crofting Commission
The chair of the above body should be selected by the two appointed and the six elected commissioners and not by Scottish Ministers. It would also be desirable that the chair should be a Gaelic speaker.

Croft Registration
This should be undertaken by the Commission using Geographical Information Systems (GIS) as is done with Common Grazings – and should prove to be a relatively simple task. The cost of the whole exercise should be borne by the commission and not the individual crofter.

Croft Administration
There should be no financial outlay to crofters for any administrative tasks undertaken by the Crofting Commission with regard to individual crofts.
Absenteeism & Croft Neglect
We do not have a great problem with absenteeism on Tiree but there is an issue with croft neglect. With regard to absenteeism we feel that should the new “Consent for absence from croft” be implemented, this would need to be flexible. For example leave of absence from a croft would need to be for periods ranging from six months up to one year and this renewable on an ongoing basis. It must also be remembered that with a limit of 30 hectares placed on the size of new crofts (on say a poor quality holding) he/she would need to seek other employment outwith the croft in order to support a family. Croft neglect is a difficult subject, although widespread, it can sometimes be related to the many environmental schemes where crofters are encouraged to allow the ground to “go wild” to facilitate, for example ground nesting birds and other mammals.

Decrofting – House Sites
With the current state of, and probable long term outlook of the housing market we are of the opinion that we are seeing the “end game” in connection with the selling of sites for holiday homes, particularly on the islands. A croft site has been advertised on Tiree for months now and there are no purchasers to date. Nevertheless, we would be in favour of allowing at least the decrofting of one site per croft for family members on which to build a house. It should also be possible for a crofter to be free to sell a site for a house in order to raise capital to spend on improving their croft. Crofting ground should not be seen as so sacrosanct that it starts to dictate the number of people that are allowed to inhabit an island township. The number of years where a crofter is required to pay the landlord half the sum raised from selling a croft house site should remain at five years as at present and not ten as the proposed Bill implies.

Croft Housing
There is no mention in the proposed Bill for increasing the grant aid for croft housing. As highlighted in “Shucksmith” typical building costs nowadays exceed £100,000 in crofting areas with the result that the £22,000 grant available in high priority areas is now completely unrealistic and must be increased.

This branch of the Scottish Crofters Federation is of the view that, one size does not fit all, with regard to such a diverse area as the Highlands and Islands with the various methods employed inland husbandry.

On another matter, we would wish your Committee to consider a visit to the headquarters of the Croft Housing and Grants Scheme on the Island to familiarise yourselves with the work undertaken there and to meet the staff.

I trust you consider all the above comments and find them informative.

Secretary
21 January 2010
SUBMISSION FROM SCOTTISH NATURAL HERITAGE

The Scottish Parliament Rural Affairs and Environment Committee’s Crofting Reform (Scotland) Bill Inquiry: Written Evidence by Scottish Natural Heritage

General Principles

We welcome this opportunity to comment further on this Bill, which seeks to address the decline of crofting, the associated high levels of absenteeism and neglect, and the gradual erosion of land from crofting tenure. We strongly support these aims – and the wider objective of revitalising crofting.

Crofting is important in relation to the natural heritage for the following reasons (quoted from our evidence for the crofting inquiry):

- Crofting characteristically involves small-scale, non-intensive management of the land, which is generally beneficial for the natural heritage. It has kept people managing the land and has helped to sustain rural communities where social and economic forces would otherwise have undermined traditional land use systems and the way of life associated with them.

- Crofting has given rise to a very characteristic landscape pattern, reflecting its origins in the planned and relatively regular division of land between holdings in a series of discrete townships. The attractiveness of this landscape owes much to long-established or old (often abandoned) features and to former patterns of use.

- Crofting areas are important for many kinds of wildlife, reflected in the number/extent of designated sites, including Natura sites, Sites of Special Scientific Interest and National Scenic Areas. Much of this wildlife depends on non-intensive farming. Common grazing tenure has helped to maintain large areas of wildlife habitats (particularly machair, wetland and moorland) under sympathetic management.

- The crofting scene – both its physical manifestations and its cultural aspects – has great appeal to many people from a more urban environment. It speaks to them of a world in which man’s dependency on nature (and indeed on cooperation within the local human community) is more evident and in which the rhythm of life is dictated more than elsewhere by the weather, seasons and other natural forces. These experiential qualities mean that crofting itself contributes significantly to the visitor appeal of parts of Scotland that are remote and often difficult of access.
• The nature of crofting is nevertheless changing in ways that are generally disadvantageous from a natural heritage point of view. Indeed, in some areas – particularly the NW mainland - it now offers few direct benefits for the environment.

• The challenge facing us is to enable crofting to adapt to the demands of a changing society and a changing economy, while continuing to provide a basis for social cohesion in remote areas and continuing to provide a high level of environmental goods and services. We believe that this requires new blood and new ideas, even if introducing them involves a degree of risk.

Active management of croft land is critical to maintain the natural heritage and provide an attractive countryside for people to experience and enjoy.

Specific Comments

We do not wish to comment on the proposals to reform the Crofters Commission in Part 1 of the Bill, except to support the principle of crofters themselves being more effectively represented.

We support the proposal in Part 2 to create a Crofting Register. We were concerned that the charges first proposed for registering crofts under the new system would impose a significant burden on many crofters, so deterring them from registering their crofts voluntarily. So we welcome the revised proposals for significantly reduced charges (though noting that these will be determined by subordinate legislation).

Although the Bill is now weaker in its provisions relating to absenteeism, its approach generally is more straightforward and more readily enforceable than the residence requirement proposed in the draft Bill.

We strongly support the arrangements the Bill would introduce to ensure that crofts are put to a ‘purposeful use’. We are pleased to see that they may be exempt from this requirement, however, if the crofter is taking active steps to manage the land for conservation.

The use of croft land for speculative purposes could be seriously detrimental from an environmental point of view. We welcome the amendments in Part 4 of the Bill relating to de-crofting, and in particular the requirement for the Commission to take into account the implications for the landscape and environment of the area. The longer period for which a ‘claw-back’ from the proceeds of a sale of de-crofted land will apply is an important control in this respect.

Finally, we support the proposal in Part 3 of the Bill to treat owner-occupiers and tenants alike.
SUBMISSION FROM SHETLAND ISLANDS COUNCIL (ECONOMIC DEVELOPMENT UNIT)

Crofting Reform (Scotland) Bill

Consultation response from Shetland Islands Council (Economic Development Unit)

The following has been prepared by an Economic Development Project Manager in the light of the previous submission to the Draft Crofting Reform (Scotland) Bill consultation, made on 15 July 2009 by the Head of Business Development after taking advice from the agricultural sector in Shetland at the Agricultural Panel meeting on 24 June 2009.

Part 1 – Reorganisation of the Crofters Commission

Part 1 proposes reforms that are intended to make the Crofters Commission more effective in delivering its core function of regulating crofting. Through changing the constitution of the Commission to allow for directly elected members, the Bill aims to make the Commission more representative of, and accountable to, the people it regulates. It also proposes to give the Commission greater flexibility to develop regulatory policy so that crofting develops in the interests of crofting communities and the wider public interest. Changes are also proposed to the powers of the Commission to bring it into line with more conventional non-departmental public bodies that receive grant-in-aid and have the flexibility to spend their budgets as they see fit.

SIC EDU response - It is positive to see that the proposal for Area Committees has been scrapped, with the retention of the existing assessors’ network acknowledging the strengths the latter already possesses. We would reiterate our previous suggestion that the assessors’ network be built on to become the main way to inform and take decisions; similarly, if the existing Commission structure is to be strengthened, it may be healthy to remove the appointment of the Chair of the Crofters Commission from the discretion of the Minister, and instead put it to the vote of the existing Crofters Commissioners.

Part 2 – The Crofting Register

Part 2 of the Bill proposes to create a new Crofting Register which, in effect, will eventually replace the existing Register of Crofts, which is now considered to be incomplete and outdated. The Bill gives responsibility for establishing the new register to the Keeper of the Registers of Scotland, who is responsible for maintaining other property registers in Scotland. The new
Register will be map-based and will clearly define the extent of, and interests in, a croft and other land held in crofting tenure, such as common grazings. In addition to providing crofters with greater security over their croft, an accurate and current legal register is considered to be important in the effective regulation of crofting.

SIC EDU response - While it is good to see that the estimated average cost of registering croft land has reduced to £80-£130 from the original estimate of £250, we still question the rationale behind the new registration process as a whole. In particular, we remain unconvinced as to the practical benefits for crofters themselves in the proposed new Register, and concerned that this will inflict yet another layer of additional bureaucracy upon hard-pressed crofters. It seems more logical for the Scottish Government to support the continuing efforts of the Crofters Commission to improve the existing Register of Crofts.

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Part 3 of the Bill defines “owner-occupier crofters” and puts in place a new process for addressing absenteeism and neglect on croft land. At present, the Commission has a discretionary power to tackle absenteeism and action on neglect is dependent on either a complaint being made or the consent of the landlord being given. The new process places a duty on the Commission to take action in respect of absenteeism and neglect by both tenant and owner-occupier crofters. This will help to ensure that crofting contributes to economic growth by requiring crofters to be resident on, or near, their croft and to put it to some form of productive use.

SIC EDU response - We agree with the premise that croftland should be put to productive use, but remain concerned that in a geographically fragmented island group such as Shetland the occupancy requirement for an owner-occupier being resident within 16 kilometers of a croft may be unreasonable if much of that distance is made up by open sea – in practice but a short ferry crossing from a place of residence to the croft. Similarly, this distance criteria fails to sufficiently recognise the expediency by which for a crofter’s family to enjoy ready access to community facilities it may be desirable for the family unit as a whole to live apart from the croft, and still work the croft on a regular and productive basis.

Part 4 – Further amendments of the 1993 Act

Part 4 of the Bill makes other changes to the Crofters (Scotland) Act 1993 that are intended to deliver a number of policy goals. Sections 25 to 29 aim to tackle speculation on the development value of croft land through strengthening the grounds under which the Commission may reject an application to decroft. At present, the Commission regards itself as obliged to approve applications to decroft where outline planning consent has been granted. These provisions enable the Commission to reject applications to decroft where it considers the cumulative effect of such applications to have a negative impact on crofting in the area, the long term sustainability of the
community in which crofting takes place and the corresponding environmental, cultural and landscape benefits derived from crofting. A change to the requirement for approval for the enlargement of crofts is also included at section 30 of the Bill and section 31 proposes changes to the processes for obtaining Commission consent to make this process simpler and more efficient.

SIC EDU response – we commend strengthening the Crofters Commission’s discretionary powers to consider applications to decroft the finite resource of existing croft land.

Part 5 – General and Miscellaneous

Part 5 of the Bill includes general provisions concerning matters such as regulations and orders, ancillary provision, minor and consequential amendments and repeals, and crown application. In addition, section 32 includes a power to make modifications of enactments relating to crofting ahead of proposed consolidation, which will allow for the simplification and clarification of crofting law.

SIC EDU response – there is no mention of charging crofters for regulatory work in the Bill as it stands, and if this represents a change of heart from the proposal to charge for this in the Draft Bill, we are supportive of this decision. However, it would be constructive to have an explicit indication that this is indeed the case, and crofters will not be charged by the Commission for regulatory work carried out as part of the service the Crofters Commission provides.

General SIC EDU comment – Croft House Grants

While it is pleasing to see that the draft proposals to introduce standard securities to allow crofters to borrow against croft tenancies have been dropped, it is disappointing that alternative proposals to support crofter-housing have not been included in the Bill as it stands. The existing Croft House Grant Scheme levels of intervention (up to a maximum of £22,000), though better than nothing, belong to an earlier age when the cost of building was considerably lower than it currently is. With no realistic sign of the cost of raw materials coming down in the future, this support measure needs to reflect the realities of the house construction industry of the present rather than the past, and nowhere more so than in island communities where all materials incur additional freight costs that are passed on to the crofter, and a limited house construction labour-pool also increases the cost of all building works.

SUBMISSION FROM PROFESSOR MARK SHUCKSMITH OBE
1. The Committee of Inquiry on Crofting, appointed by the Labour/Lib Dem government in April 2007, drew on considerable knowledge of crofting and rural development and also engaged with about 2,500 people throughout crofting communities during its work. This remains the largest consultation of crofters’ opinions ever undertaken, and included the views of 1,000 people selected at random by a reputable research company to test whether the views of those contacted were representative of broader opinion. Most of the Committee members were crofters or had close connections with crofting: Jane Brown, Fred Edwards, Susan Lamont, Norman MacDonald, Donald MacRae, Agnes Rennie, Becky Shaw and Mark Shucksmith. In this submission I hope to offer the Rural Affairs and Environment Committee some helpful reflections from the work of the Committee of Inquiry on Crofting, and from the huge volume of evidence we gathered, though I should emphasise that this is a personal statement which also draws on the latest international literature on sustainable rural development.

Sustainable rural development – towards crofting’s future.

2. One of the reasons for establishing the Committee of Inquiry on Crofting was the recognition during debates in this Committee in 2007 that there was no long-term vision for the future of crofting to guide policy. However, Scotland does have policy statements on sustainable rural communities (Scottish Executive 2007), further developed by an OECD review of rural policy in Scotland (OECD 2008) and various speeches by current Ministers. The central theme of these is empowering communities to envision their futures, building their capacity to act and supporting them in developing and implementing strategies in pursuit of their hopes for the future. This indeed was the rationale for radical land reform legislation in 2003, which gave rural communities collectively the power to buy the landlord’s interest in their estates and to bring these into community ownership, with funding from the lottery and strong support from a Community Land Unit within HIE. Yet, in the main, crofting has been, and continues to be, characterised not by empowered local communities but by distant control. This highlights key issues both of governance and of capacity-building.

3. This is not to say that there is no institutional capacity in the crofting areas – far from it. Within crofting communities there are community-level institutions specific to crofting, notably Common Grazings Committees which bring grazing shareholders in a township together to agree on management of the common grazings. Some are highly active, addressing far wider issues for the future of their communities, while others are moribund. There is also an energetic and effective crofters’ union, the SCF. Most notably, in the last few years, communities in some areas have mobilised, with the considerable help of HIE’s Community Land Unit, to acquire the ownership of their landlords’ estates. According to Bryden and Geisler (2007), the
Community Land Unit and Scottish Land Fund have been “vital tools for community empowerment and enterprise in fragile rural areas of Scotland.” More than half the land area of the Western Isles is now in community ownership. Members of these crofting communities are engaged vigorously and collectively in formulating strategies for their development, shaping the future of their own places, no longer passive in the face of others’ decisions. This movement accords with the latest international thinking on sustainable rural development, summarised in the OECD’s New Rural Paradigm (2005) and in Carnegie’s advocacy of community asset-based development approaches (Shucksmith 2010).

4. But a key question remains of how many crofting communities are likely to mobilise in this way, and what might be the role of the State and others in building/revealing their capacity to act and otherwise supporting them. It is still a small minority of crofting communities which have mobilised in this way, and policy – despite the commitment to objectives of sustainable rural development – continues to prioritise agricultural support over investments in community and economic development. The Committee of Inquiry on Crofting took the view that this was a fundamental issue for the future of crofting: how might more communities be supported and incentivised to mobilise in similar vein, even if they did not wish to go so far as to exercise their powers under the land reform legislation?

5. The Crofting Inquiry’s report (2008) therefore suggested a series of measures to extend the ‘place-shaping’, rural development approach beyond those areas in which community buy-outs had occurred. This is the fundamental rationale for the Inquiry’s proposals for community empowerment in respect of both regulation and development, supported by generative state action and by refocused sectoral policies which would operate to encourage local strategies. At the heart of its recommendations were proposals for township development committees, supported by HIE’s ‘Growth at the Edge’ team, to engage in deliberative place-shaping and for their community-led strategies to have to be reflected in decisions made by planning authorities and other bodies (see below). In this way, the state would both support and incentivise mobilisation at community level. (It is notable that this central element of the Committee’s thinking has received very little attention, and is not reflected in the proposed legislation.) Meanwhile, also reflecting this approach as well as improving accountability and transparency, regulation would be placed in the hands of elected area boards rather than an appointed, centralised Crofters Commission; and these boards would be given stronger powers to address absenteeism and neglect. Alongside these changes in governance, other recommendations sought to refocus agricultural, economic development, housing and planning policies towards support for locally-agreed strategies and crofting.
6. Many of these proposed elements are beyond the scope of this legislation, including higher grants, loans and payments, although they are bound up with it (see paras 15-17 below). It is important that the Committee keeps the wider package of measures in mind when reviewing the proposed legislation.

The scale at which development occurs.

7. An issue which has already arisen in the Committee’s deliberations (record of meeting 20/1/2010, column 2313) is to ask at what scale development occurs. Recent research suggests that local communities are an effective scale for mobilising people around place-based identities and assets, and this is confirmed by the experience of community-owned estates as well as by LEADER and Initiative at the Edge. Another recent instance of this is in the community of Camuscross in Sleat. This is why the Inquiry Report proposed that grazings committees should be encouraged, if they wished, to take on the broader role of township development committees with enhanced powers and funding to bring people together to develop strategies for their collective future. International experience shows how effective such an approach can be, so long as support and incentives are available. The support provided by the Community Land Unit for communities in the Highlands and Islands is ideal and could be a vital asset in promoting sustainable rural development more generally if its funding were secure. The issue of incentives is equally vital: communities will only come together and mobilise if they believe this will achieve something worthwhile, and it is all too frequent an experience for communities or villages to devote time and energy to preparing excellent plans and strategies which are then ignored by higher powers. If mobilisation is to be encouraged, then, there must be a duty placed on crofting regulators and on planning authorities to reflect properly-constituted community plans in their decisions. This would make community empowerment a reality.

8. It is not sufficient for action to be taken only at the community level if development is to be fostered and capacity built. There is a responsibility at all levels of government to encourage and enable community-based development. The Crofters Commission had primary responsibility for crofting development since 1955 but the Committee of Inquiry heard evidence that less than 1% of its resources were devoted to this duty. Indeed, when this responsibility was subsequently transferred to HIE in 2009 the Crofters Commission revealed that it devoted only £180,000pa to crofting development. This is because all their energies and resources were devoted to regulation, and this ‘crowded out’ the vital function of development. Now that this function has been given to HIE, as the development agency for the region, it is crucial that crofting development is properly resourced and not marginalised in an agency widely suspected of becoming more focused on large enterprises elsewhere.
The Regulation of Crofting

9. Turning to the regulation of crofting, a recurring theme in written evidence to the Committee of Inquiry on Crofting was that the composition of the Crofters Commission should change to permit greater area representation and to be more accountable. Many called for democratically-elected representatives, including local area delegates. In the survey covering 1000 people (the most comprehensive survey of crofter opinion ever undertaken and carried out by a reputable survey company) only 21% thought regulation should be exercised at a national level as at present, and as proposed in this Bill. Instead, 46% thought the appropriate level for regulation was at the local community level; 34% thought it should be at the local area level; and 16% thought it should be at the local authority level. The evidence was therefore clear that most crofters wanted more local control and accountability. There was also a strong message that different crofting areas have different traditions and have different ideas on future directions for crofting – community ownership is most widespread in the Western Isles, for example, while the right to buy individual crofts has been most popular in the northern isles. People were concerned nevertheless that there might be difficulties created if regulation were exercised at too local a level.

10. The Inquiry Report therefore proposed that regulation should be done by professional staff, following policies agreed by area committees at roughly the scale of the former district and island councils. These would be directly elected by crofting communities, so people would have democratic control over the regulatory policies operated in their area subject to an overarching framework set by legislation and by Ministers, as occurs with planning regulation already. This would allow, for example, the right to buy or occupancy conditions to be suspended in the Western Isles if the electorate supported it, while continuing in Shetland, say. This proposal puts power and responsibility into the hands of crofting communities, in much the same way as devolution seeks to empower the people of Scotland, allowing for different priorities and for the diversity of contexts and traditions (see Committee meeting 20/1/2010, col. 2310). Whether or not one accepts the detail of these proposals, these are important principles of democratic accountability and subsidiarity to which most people subscribe.

11. The Committee has raised the question of who should be eligible for election, and who should be the electorate (Committee meeting, 20/1/2010, col. 2331). The crofting community consists of more than only registered crofters, as recognised in people’s responses to our survey of opinion. Apart from crofters, their families and landowners, many other people live in crofting communities and have a stake in their future (eg. teachers, employers). Moreover, registered crofters are overwhelmingly male and exclude the young people on whom the
future of crofting depends. For these reasons the Inquiry Report proposed that area committees should include representatives of both crofters and non-crofters. For crofter representatives the electorate should consist of all members of crofters households and anyone (crofter or not) would be eligible for election; non-crofter representatives would be nominated by local authorities who are already elected to represent the broader electorate.

Absenteism, neglect and speculation

12. There remains controversy over the appropriate balance to be struck between the interests of crofting, crofting communities and the individual crofter. However the weight of evidence presented to the Inquiry called for more effective regulation of crofting to tackle neglect and absenteeism, alongside a strong message that securing the appropriate use of land should be done sensitively and with compassion. Amongst the written submissions, 37% called for stronger regulation, typified by the view that “every empty croft is a family opportunity denied”. A further 31% were against greater regulatory powers, believing that “an already adequate regulatory framework exists but that this needs to be applied more rigorously by the Crofters Commission.” Only a small minority argued that more regulation was inappropriate.

13. In the survey, more than two thirds of respondents wanted restrictions on sales and transfers of crofts, with only 21% disagreeing, while an overwhelming 88% said crofts should only be available to people who would work the croft. Only 24% thought crofts should be allowed to be sold to the highest bidder, with 57% against. There was also overwhelming evidence of a desire to take action against absentee crofters – 69% agreed that absentee crofters should be forced to assign their crofts, while 79% felt they should be forced to sub-let for a fixed term. (The objections raised to leases by Jim Hunter in oral evidence on 20th January – col.2314 - are persuasive, however.) While it may be hard to reach agreement on any specific measures, the evidence reveals conclusively there was overwhelming support amongst crofters for more effective regulation of residency/absenteeism, sales and assignations, neglect and decrofting. As the SPICE briefing note points out, it was the failure to tackle these very issues that led to the dismembering of the 2007 Bill and to the establishment of the Inquiry (SPICE 2010, p.3): it is vital that the current Bill offers an effective solution in this respect, however difficult this may be.

14. The Inquiry considered a number of different mechanisms to address these issues, and the Committee will be aware of our proposals to place a residency burden on crofts at sale or transfer. These encountered considerable opposition and I will not attempt to resurrect them here. However the Committee might find one aspect of our
proposals helpful – namely the idea of allowing an absentee crofter to choose to detach the house from the croft and to retain that in return for allowing the crofting regulator to direct the assignation of the remaining bare-land croft to a new entrant. Our view was that this tackled the issues of absenteeism and neglect in a particularly effective way, helping new entrants to obtain crofts through directed assignation while also ensuring that nobody would lose their house or their connection with the ancestral croft. In that respect it seemed to us to show sensitivity and compassion, allowing the outgoing crofter to retain most of the market value while making the land available to new, active crofters. This might be one way of resolving the dilemma noted at your meeting of 20th January (col.2320) between the emergence of market forces and the interests of outgoing crofters. Ultimately this is a question of balance, of sharing rather than extinguishing value.

Crofter housing

15. An absolutely central issue for the future of crofting is the availability of finance for new croft houses. Compelling evidence has shown how the former CBGLS was so effective in retaining people on the land in remote areas, with a house as a secure base from which to earn a living from a variety of sources. Moreover, this opportunity was not restricted to those with large incomes. As we were told in evidence, “crofting has made land available to the ordinary person, in a way that no other system has done.” However there are a number of problems with the current system of support for crofter housing.

- Firstly, since the CHGS offers only small grants and no loans, even after support from the CHGS it is necessary to decroft the house site in order to obtain a loan to finance the building or improvement of a house. It is not clear what is the rationale of the CHGS when, (1) far from retaining land in crofting tenure, it necessitates decrofting; and (2) it is supposed to be available to crofters only because they are unable to obtain mortgages due to their tenure. It would only have a continuing rationale if it enabled people not to decroft.

- Second, research has shown since the 1980s that these schemes tended to help better-off crofters but could not be accessed by poorer crofters since the levels of support were too low.

To remedy these defects, either the CHGS should be abolished in recognition that crofters are expected to decroft house sites and raise commercial loans (perhaps hastening the demise of crofting); or a more effective CHGLS should enable people to build their houses without decrofting and should also meet the needs of poorer (and younger) crofters.

16. For this reason, the Inquiry Report proposed the introduction of a new scheme of means-tested grants for crofters to build their homes,
together with a new government-guaranteed loan scheme which would not be subject to a ceiling. Neither of these would be available if the house site were decrofted. The loan element is crucial, as many have noted, and the loan would have to come from private sources (either building societies, banks or more innovative sources like credit unions) with the loan guaranteed by the Scottish Government in similar way to the Small Firms Guarantee Scheme operated by BERR. It is extremely rare for any defaults on loans under the CBGLS. I doubt if such a loan scheme will be feasible, however, if a crofting lease is not registrable.

17. There is a broader issue about crofters raising loans. If it is hoped that crofters will be able to act entrepreneurially in adapting to the globalised economy of the 21st Century, developing new businesses and seizing new opportunities, then it will be a considerable handicap if they are unable to raise loans secured on their property. Most crofters do not wish to take such risks, but a minority may well seek to do so in the future if jobs become scarce and returns from agriculture diminish further. Such enterprise may help to ensure the future of crofting communities by creating income and employment. Yet at present no croft tenant can offer their croft as security for a loan to start a business. This is another reason why the Inquiry Report proposed amendment to the Registration of Leases (Scotland) Act 1857 to make a crofting lease eligible for standard securities, echoing earlier proposals from Sir Crispin Agnew and others. It is hard to understand how this proposal led to fears about “new clearances”, with crofters being forced out by rapacious banks. Most crofters would not take out such loans, and even if any of those few who do were to default the land would still remain under crofting tenure and would be relet.

The Register of Crofts

18. There has been a general acceptance of the case for a definitive map-based Register of Crofts, which will register title and not be an administrative register, but understandably there has been opposition to the Government’s proposal that crofters should pay a charge for registration. There is some justification in the SCF argument that crofters should not be asked to pay for the failings of the Crofters Commission to keep a register, while it is also true that the proposed map-based register will be more useful than the one which was supposed to exist hitherto, and will be to everyone’s greater benefit. I would suggest a compromise whereby the fee is waived for registrations within the first X years. This would also have the merit of hastening the completion of a full register and realising the benefits which follow from that, so long as the workload is manageable over this period.

A Package of Reforms
19. In conclusion, I should reiterate that this proposed legislation can only be a part of the reforms required to ensure a sustainable future for crofting. I can understand that many crofters may see the Bill as "too much stick and not enough carrot", as the SCF put it, but it should be seen as part of a wider reform package which includes the support for crofting we also proposed - namely for crofting agriculture, economic and community development, and housing. It is up to the Scottish Government to convince crofters that the Bill is part of a wider package of reforms which will ensure crofting continues to thrive into the future and which will attract young people to be part of that future. I hope crofters, in turn, will seize this unique opportunity to negotiate a sustainable future for crofting. One message, above all, was made clear to members of our Inquiry - the status quo is not an option.

20. I do hope that the Committee is successful in enhancing and improving the Bill so that it provides a necessary part of the framework for a sustainable future for crofting, addressing the key issues of governance and regulation, and that the Scottish Government and other stakeholders then add the remaining elements of a comprehensive approach, set out above. My fear is that the proposed reforms will be watered down so much that nothing substantive is achieved; that no government will then want anything further to do with crofting for a very long time, after these experiences; and that crofting will be left to 'wither on the vine', disappearing to all intents and purposes in the meantime. The Committee of Inquiry on Crofting was told repeatedly that this was the last chance to ensure a future for crofting.

References:


SUBMISSION FROM THE STORNOWAY TRUST

In its present form the Stornoway Trust welcomes;

- The provisions made to address misuse and neglect of croft land
- the discretionary powers to be given to the Commission to deal with absentees. It should be noted that less than 3% of the Trust's 1300 croft tenants are classed as long-term absentees, many of whom allow active crofters the use of their holdings.
- The removal of the standard security provisions from the Bill
- That possession of planning consent will no longer be regarded as a material consideration in the decrofting process.
- The omission of the Area Committee's proposals from the Bill
- The attention given to owner-occupiers, and the measures proposed to bring owner-occupancy into line with crofting tenure.
- The reduction in registration costs should the requirement to register become a legal obligation
- The Government's commitment to meet the costs of registering common grazings
- The introduction of a 10-year "clawback" period.

The Stornoway Trust is disappointed that the Bill does not appear to;

- Give the Crofting Commission a crofting development remit
• Remove pressure for decrofting through improved financial provision for crofter housing support

• Address the need to improve the effectiveness of the local assessor system

• Address the recognised abuse of the nominee purchase provision of the 1976 Act to circumvent the Commission's tenancy transfer procedures

• Recognise the existence of well maintained existing registers of tenancy information

• Remain silent on measures which would reward and encourage productive use of croft land.

• Identify failure to maintain croft land in a state which does not adversely impact on neighbouring interests as an example of abuse and neglect.

• Extend the 16km residency requirement to a more practical distance (eg 60km)

The Stornoway Trust Has Concerns Over:

• The proposed changes to the status and restricted functions of the Crofting Commission

• The legal implications of the proposed change

• The implication loss of immunity may have on attracting future Commissioners and their perceived objectivity should they have to function under external and budgetary pressures

• The uncertainty over the geographic makeup of the Commission

• The serious implication on crofting and the proposed Commission if the legislation and remit of the Commission fail to attract suitable candidates.

• The uncertainty over how entitlement to vote for Commissioners will be determined. The Trust firmly supports the view that all registered tenants carried over from the existing Crofters Commission's register and updated thereafter should be deemed eligible to vote.

• The proposed trigger points for registration. The argument that the registration process may avoid future disputes does not seem to
acknowledge the likelihood that the proposal will instigate many cases of unnecessary and avoidable strife along the way.

- The proposed first come first serve ranking
- Crofters being disadvantaged if they experience problems and delays in achieving registration.

**LETTER FROM THE CROFTERS COMMISSION**

**EVIDENCE FROM THE CROFTERS COMMISSION REGARDING THE REGISTER OF CROFTS**

I write to you as I feel it is necessary to correct certain statements which have become part of the evidence you have received in your inquiry into the current Crofting Bill. Regrettably, some quite inaccurate impressions have gained currency over the years, and I feel it is my duty to correct these, where I am able, in justice to Commissioners and Crofters Commission staff past and present.

Here, I would wish to rebut recent criticisms of the Commission by, in particular, Professor James Hunter in regard to the alleged failure to compile and maintain the Register of Crofts so that it would include not only the extent of crofts registered in it but also include or show the boundaries of these crofts by reference to plans (apparently to a standard akin to that for the proposed new Crofting Register). My reasons can be summarised as follows:

- The first Register was compiled by the Commission in accordance with the duty imposed by section 15 of the 1955 Act. The Register was to be compiled and from time to time revised in a form approved by the Secretary of State. There was no requirement to compile or maintain a map-based Register.

- The Commission have a continuing duty under the 1993 Act, as amended, to compile and maintain the Register.

- There was no existing Register of Smallholdings in Scotland when the Commission began the compilation of the Register.

- The information that the Commission could require the owner or the occupier to provide for the purpose of compiling the first Register was restricted to the acreage, the rent and the tenure of the holding and such other matters relating to the ownership or the occupation of the holding as the Commission reasonably required for the execution of their functions under the Act. Essentially, the information about the extent of any croft recorded in the Register is only as good as the information originally provided by the owners or occupiers on whom notices were served by the Commission.
• Although the status of any registered croft may now be immune from challenge, the extent and boundaries of any registered croft can still be challenged and any continuing dispute can only be resolved by the Scottish Land Court, not the Commission.

• That Register of Crofts was "never intended to be anything more than a piece of administrative machinery". It is not map based and the Commission could not require the production of maps for the purposes of its administration of the crofting system or for any other purpose.

• Until the 1993 Act was amended by 2007 Act, anyone who requested an extract of any entry in the Register had to be a person who, in the opinion of the Commission, had good reason for doing so. It is only recently that the information now contained in the Register has been freely accessible to the public.

• The Commission have, to the best of my knowledge, diligently recorded or amended the Register by inserting new entries or changing or omitting existing entries in accordance with notifications received from the Land Court, landlords and other competent informants. They have, of course, also noted all changes effected by their own orders or directions (for example, apportionment orders or decrofting directions).

• The Commission have compiled a computerised mapping system showing all areas of apportioned common grazing and all areas for which they have made decrofting directions (by reference to plans of the areas to which these orders and directions relate).

• Although the Commission have, to the best my knowledge, diligently recorded the extent of all parts of common grazings or crofts authorised to be resumed by Final Orders of the Land Court as intimated to us, these areas are not shown on the Commission's mapping system. That is because any plans produced to or referred to by the Court in its orders are not routinely copied to us by the Court.

• Unfortunately, parties to transactions involving croft land (to which the consent of the Commission is not required by law) frequently neglect or omit to notify us of changes in ownership. This is despite the legal requirement to do so, breach of which renders the person acquiring that land liable to summary prosecution. Also we are often not notified of changes in residency on or off the croft. (Note that crofters and owners are not legally required to tell us of changes in occupation or residency, as opposed to changes in ownership, unless and until we require them to do so). This has effectively inhibited our ability to identify and deal effectively with, for example, absenteeism where that is not otherwise brought to notice by the local crofting community.

• However, it has to be admitted that lack of available resources has limited the Commission’s ability to proactively review the currency or
accuracy of the information contained in the Register from time to time. Nevertheless, I am confident that the Register is duly amended whenever new information is provided and that the Register accurately reflects that information.

I hope the above information will be useful to you in your continuing considerations. If you require any information or have any questions or requirements for clarification arising out of the above, in advance of your imminent meeting, please let me know and I will do my best to oblige.
The State of Crofting in Camuscross

A Report by Iain MacKinnon & Susan Walker

"Thèid dùthchas an aghaidh nan creag"

(Kinship withstands the rocks - Gaelic proverb)

August 2009
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1. Introduction

Stimulated in part by the current debate on the draft Crofting Reform Bill, this report has been drawn up with input from crofters in Camuscross, a crofting township in the parish of Sleat in the south of the Isle of Skye, to exemplify some of the problems and opportunities facing a Highlands and Islands township which is seeking to use crofting to become more agriculturally and culturally active.

Crofting is a hereditary system of land holding given legislative recognition through the Crofting Act of 1886 and it has been practised in Camuscross for around 200 years. Crofters have security of tenure on the land in perpetuity and in return for this the legislation requires that they meet certain regulatory conditions, including that they reside on or near the croft and that they take measures to control harmful weeds.

For most of the last 200 years, even through periods of great hardship, there was a lively and active agriculturally based community in the township. Agriculture itself, however, is only part of the story. The human ecologist Frank Fraser Darling who provided the UK government with a comprehensive record of life in the crofting areas in his ‘Highland Survey’ of the 1950s emphasised the “egalitarian” nature of crofting communities, adding that “a croft is not a farm” and is as much a social as an agricultural unit.

In Camuscross we believe that by supporting and encouraging crofting agriculture, the government is playing an important role in ensuring the continuation of what remains of the place-based, largely self sufficient and socially inclusive way of life that once characterised the crofting areas.

Helping with the potato planting on a neighbour’s croft, Spring 2009
This way of life is not only important historically and culturally, as acknowledged by successive governments, but, when viewed within the context of the many challenges which face us in the 21st century, demonstrates itself to be a system with increasing relevance, socially and ecologically for the present and the future.

The report ‘The State of Crofting in Camuscross’ gives a comprehensive description of crofting activity in the township and gives a series of grounded examples of regulatory issues in the township regarding the protection of croft land for which the Crofters Commission has responsibility.

Among its findings, the report shows that in the 39-croft township:

- the owners or tenants of almost one third of the township’s crofts are absentees
- three-fifths of the township’s crofts show signs of agricultural neglect
- slovenly decrofting procedures have left one family without direct vehicular access to their croft
- one croft has been absentee occupied for three generations
- the Crofters Commission has replaced one absentee tenant in the township with another, despite local interest in the croft
- houses built on apportionments in the township are being used as holiday homes
- one absentee, who has never lived in the village and has no family connection to it, has been using their croft as a holiday home business for more than 20 years – taking around £50,000 gross annually on it. This croft and two holiday letting houses is now on the market for offers over £590,000.
2. **Historical context**

2.1 **Sleat**

Although in the 1950s Frank Fraser Darling could still describe community life in Sleat as “intensely sociable”, he acknowledged the devastating effect of population loss on the area.

In 1951 there were 623 people in the parish, one-fifth of the total population a century earlier. By 1971 that number had fallen to just 450. The following year saw the arrival of a new progressive landlord in Sleat and consequently the beginnings of the Gaelic college Sabhal Mor Ostaig which has become the area’s major employer. Since then the population decline has been reversed. In 2001 there were 780 people in Sleat and the continued expansion of Sabhal Mor, and the area’s popularity as a retirement destination, means there are likely to be well over 800 people living in Sleat at present. Around 16.5 per cent of those people are over 65.

2.2 **Camuscross**

Camuscross’ story reflects the general picture for Sleat. According to the census figures, in Camuscross in 1901 there were around 150 people.
By the mid 1950s that number had fallen to just 67 – made up of 50 adults and 17 children.

The decline continued over the next twenty years. One local man remembers that when he moved back to Camuscross in 1972 there was only one child there. He says that Camuscross was mainly “spinsters, bachelors and couples with grown up children who had moved away”.

In that year Iain Noble bought the local estate and based himself in Eilean Iarmain, the village neighbouring Camuscross. He made it a policy to encourage the Gaelic language and way of life, which helped to begin a revitalisation of Camuscross.

Today there are 125 people living in Camuscross (including the wider area of Camuscross, Cruard and Barabhaig). Of those, 100 are adults and 25 are of school age and under. Around 40 per cent of the adult population are retired.

Note: Although there is a high percentage of retired people, many of these are active, a number working their croft, keeping gardens, or involved in community organisations.
3. The state of crofting in Camuscross - past and present

3.1 The Past

The number of crofts in Camuscross and Cruard has fluctuated over the years but remained at a total of around 40. Almost all are between two to four acres in size and both the inbye land and common grazings is poor, with a lot of peaty, poor-draining soil. The common grazing is very small compared with other townships in the parish: the souring was traditionally two cows and followers per common grazings share (recently amended so that one of the cows can be replaced by five sheep). The crofts were deliberately created too small for people to live from: in common with crofters in most of the north west, Camuscross crofters have always had to find other employment, and that is still true today.

The general decline in crofting agriculture throughout the crofting counties has been well documented – most recently in a report compiled last year for the Scottish Agricultural College suggesting that in some parts of the Highlands and Islands sheep numbers in the last decade fell by as much as 60 per cent. Another study from 2008 found that: ‘In terms of numbers the breeding flock in the Highlands and Islands continues to decline by some 60,000 ewes per annum and the suckler cow herd by around 3,000 cows per annum.’

Again the story of Camuscross reflects that decline but in recent years there has been a resurgence of interest in both keeping livestock and growing crops (see the tables in section 3.2.). In 1959 there were 43 cattle and three goats in Camuscross. There were hens kept on 17 of the crofts. At that time, oats were still grown on many of the crofts, as well as potatoes. In the 19th century people were able to eat the oats grown in the township but by the end of the century, because of the smallness of their holdings, crofters had exhausted the ground to such a degree that the oats were only fit for animal fodder.

Camuscross circa early 1900s
3.2 The present state of crofting in comparison with the past

There are currently 39 crofts in Camuscross and Cruard, which are held by 33 crofters. In 2009 there are 18 cattle and 47 sheep, five horses, three pigs, with hens and other poultry on six crofts. Some other crofters allow their in-bye land or grazings rights to be used by other crofters/farmers. This year potatoes have been planted on ten crofts (again a marked increase on previous years, although there is a big variation in the sizes of the areas planted), hay and oats are cropped on two crofts and turnips on one and there are a growing number of vegetable patches, including one polytunnel and one greenhouse.

This resurgence in crofting in the last 20 years is the result of an older generation of crofters – a dwindling number of whom still worked their land – being joined and encouraged by returning natives, by sensitive and skilled incomers and by younger people from the village and from elsewhere who, perhaps sensing the spirit of the times, are keen to work the land.

Note: Sheep numbers have increased by over 20 head over the last five years with the introduction of a flock of Hebridean sheep by a returning absentee family

Having outlined the past and the present of our township, we would like to share more details of crofting activity in Camuscross in relation to some of the problems that the township faces in revitalising crofting.
3.3 Agricultural use of crofts in 2009

3.3.1 Livestock
At present 16 of the crofts (41 per cent the total number of crofts in the village) have livestock or hens on them:

- eight crofters keep livestock. Of these: one keeps cattle, sheep and horses; one keeps sheep and cattle; one keeps cattle; two keep sheep; two keep pigs; one keeps horses.
- four crofters allow others to graze livestock on their croft or use their grazings share.
- six crofters keep hens.

Eight crofters produce their own meat: mutton, beef and pork, some of which is processed into black pudding, sausages and bacon.

Absentees: Two absentee crofters offer their land to another (resident) crofter to graze livestock

![Use of crofts - livestock 2009](chart1.png)

![Use of crofts in 2009](chart2.png)
3.3.2  Crops
Fourteen crofts (36 per cent) in total are used to produce crops to some extent, although there is a big variation in the areas and numbers of crops: Ten crofts (26 per cent) have potatoes or vegetables on them – from a tiny patch to one-fifth of an acre. Two crofts have other arable crops: turnips and corn. Two crofts are cut for hay and one for silage by the crofter; four crofts are used by a Duisdale crofter for silage.

Absentees: Two absentee crofts are cut for silage by others

<table>
<thead>
<tr>
<th>No of crofts</th>
<th>Stock</th>
<th>Crops (others)</th>
<th>Weed control</th>
<th>Meat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Use of absentee crofts

<table>
<thead>
<tr>
<th>No. of crofts</th>
<th>Stock</th>
<th>Crops</th>
<th>Weed control</th>
<th>Meat</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>16</td>
<td>14</td>
<td>16</td>
<td>8</td>
</tr>
</tbody>
</table>

Use of crofts, excluding absentees, 2009

Bladh a thoirt do’n fhearain ma’s tig an t-acras air;
Fois a thoirt dha ma’s fhàs e sgíth
A ghart-ghanadh ma’s fhàs e salach:
Comharran an deagh thuathanaich”

Feeding the land before it gets hungry,
Giving it rest before it gets weary,
And weeding it well before it gets dirty:
The marks of a good husbandman
3.3.3 Tractors
Nine working tractors are owned by seven crofters.

*Absentees*: no absentees have a working tractor

3.3.4 Weeds – rushes, Japanese knotweed, bracken, dockens, ragwort
On 16 crofts (41 per cent) some attempt is made to control weeds. On 23 crofts (59 per cent) no attempt is made to control weeds.

*Absentees*: On none of the 11 crofts held by the nine absentee crofters/owner-non-occupiers is any attempt made by them to control infestations of weeds. i.e. absentees are responsible for 48 per cent of the crofts where no attempt is made to control weeds.
3.4 **Housing and its occupancy**

There are 80 houses in Camuscross, of which 27 are croft houses. Twenty-three crofts are or will soon be lived on by the crofter: currently 21 are lived on by the crofter, and two have recently been tenanted and will be lived on once a croft house is built. Five crofts have no houses on them, i.e. are either bareland crofts or multiple occupancy crofts. As almost all of the land in Camuscross was once under crofting tenure (apart from Cruard garden ground and Baravaig) it is clear that a considerable area of in-bye land has been taken out of crofting for housing – although this has taken place over a number of decades.

**Absentees:** Eleven crofts (28 per cent) are held by nine absentee tenants or owner-non-occupiers. On these crofts, three of the croft houses are used for holiday letting, two of the croft houses are used as holiday homes, two crofts are lived on by family members, and four crofts have no house on them: two of them are multiple occupancy crofts, and two are bareland crofts, the croft house having been sold off by the crofter. One croft has a derelict house – this is the only derelict house in the village.

![Occupancy of housing in Camuscross, including croft houses](image1)

![Status of permanently occupied homes](image2)

<table>
<thead>
<tr>
<th>Status of permanently occupied homes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rented: 23</td>
</tr>
</tbody>
</table>

| No. of households with an adult living with parents | 6 |
The State of housing on absentee crofts

The total number of permanently occupied households is 52. Of these, nine are rented on long lets and six households have an adult living with parents. As two of the tenants of houses in long lets have recently taken over the tenancy of crofts and will build their own houses, the number of people in rented homes or living with parents who do not currently have a prospect of becoming a crofter or building their own home (thirteen) is close to the number of absentee bareland crofts or absentee croft homes which are holiday homes or derelict (ten).

**Houses in Camuscross, including croft houses, which are not permanently occupied**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holiday homes (private)</td>
<td>16</td>
</tr>
<tr>
<td>Holiday letting – run by a resident</td>
<td>4</td>
</tr>
<tr>
<td>Holiday letting - run by an absentee crofter</td>
<td>3</td>
</tr>
<tr>
<td>Empty houses</td>
<td>4</td>
</tr>
<tr>
<td>Derelict houses</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>28</strong></td>
</tr>
</tbody>
</table>

**Derelict croft house**

**Two occupied croft houses and potato patch**
4. Factors which encouraged the rise of crofting in Camuscross

4.1 Reletting by the estate
In 1990, an event took place which can be viewed as crucial to the resurgence of interest in crofting in Camuscross. Unusually, three crofts had been returned to the township’s landlord, who decided to relet, not on the open market, but on the basis of who the landlord thought would make the best crofting tenants.

The estate used a questionnaire for prospective tenants that established whether they: had agricultural experience; were Gaelic speakers; had family connections to the township; or had young families. Three young families were chosen, two of which had previous agricultural experience, and one which had strong family connections and relatives in the township. Today the families are amongst the most active crofters in the place, with one keeping a milk cow and growing hay, corn, potatoes, turnips, vegetables and with a polytunnel; one with sheep, a cow and horses; and one has gradually become more active, having kept pigs, keeping hens, has bought a tractor and this year ploughed for potatoes.

4.2 The return of absentees
The reletting to three young families was followed by the return of two tenants whose families had been absentee for some years. The first tenant has built up a small flock of sheep, keeps various poultry, has a large patch of potatoes, and some vegetables.

The next tenant was encouraged to return by letters from the Crofters Commission asking him what his intentions for the croft were. When he decided to return, his daughter and her partner also came to the place. This croft is now lived on and worked by both generations and is stocked with cattle, Hebridean sheep, poultry, potatoes and vegetables.

Both of these tenant families brought with them an enthusiasm for crofting and the ability to inspire and involve others; the first annually enlists help from neighbours in planting and lifting the potatoes, creating an enjoyable community event which raises the profile of crofting in the township, and has also been crucial to a revived interest in black pudding making. The second family has brought a great enthusiasm for different potato varieties, traditional livestock breeds and considerable knowledge of and skills in food processing and cooking and has encouraged other families to learn skills such as sausage-making and bacon curing. They have also pioneered the idea of co-operative ownership of stock, enabling crofters who do not own stock, or those outwith crofting to become involved.
4.3 More crofters become active
Growing activity among other crofters in the township is a marker of this general rise in interest in crofting. One crofter who has kept sheep for many years has recently bought a tractor, and now plants potatoes and grows other vegetables and regularly tops his fields to keep rushes at bay; one is increasing the size of the vegetable and potato garden each year; one keeps pigs, and allows neighbours to use his croft for pigs and potatoes; another keeps pigs, allows someone from outwith the village to use his croft and grazings share for cattle and this year has planted potatoes.

4.4 Young crofters
The two youngest crofters in the township have recently been assigned their crofts by older relatives to enable them to enter crofting. Both young couples intend to build houses on their crofts, and this year both cut peats; one already has a small patch of potatoes and vegetables and intends to keep livestock.

One of the younger people in the village who is most keen on crofting is, as yet, not able to be a crofter. He comes from a family without a croft, but regularly helps a neighbour with livestock and machinery work and keeps his pigs on a neighbour’s croft and is very keen to own his own cattle. He has registered an interest with the Crofters Commission in acquiring the tenancy of a croft in Camuscross.

It is known that six other young people in the village, the majority of whom have a partner or family, are also keen to acquire the tenancy of a croft, if it were available and affordable. A young, active family with a crofting background who wanted a croft in Camuscross has now moved to another township. It is expected that there would also be demand from outwith the township, although interest has not been gauged.
5. The Problems

“Am fear a tha na thàmh, tha e na leth-trom air an fhearainn”  
He who is idle is a burden on the land

Fear a’ dol an àite fir, a’ fagail an fhearainn daor”  
Tenant replacing tenant leaves the land dear

This critical section of the report outlines some of the challenging issues facing our community and crofting communities in general, namely:

- Absenteeism
- Neglect
- Speculation on croft land
- Access
- Apportionments
- Weaknesses within the regulatory system and bodies that have a duty of care to crofting.

We believe that grounding these issues (which can sometimes appear arcane) in real-life examples from our township will give readers a clearer understanding of them. Crucially, these examples show that the issues are often related. Our report shows that neglected crofts are often those of absentees and that access problems can arise when bureaucratic institutions with a duty of care to crofting fail to protect crofting interests.

While the issues raised here are by no means exhaustive of those facing crofting communities, what our research shows is the range, scale and interconnectedness of problems that are facing one small crofting community alone.

Wider inhibitor to development
One wider problem that emerged strongly during the consultation process on this report is the need for an abattoir to serve the agricultural community of the Isle of Skye and neighbouring mainland communities. At present all animals have to be transported to Dingwall, 100 miles away, to be slaughtered, placing a considerable extra cost and time burden on crofters wishing to produce their own meat for consumption or sale. Until a solution is found to this problem, it will continue to inhibit any increase in meat production in the area.
5.1 Apportionments

5.1.1 The Problem:
Four apportionments have been approved on the common grazings, one full (agricultural) apportionment, three for housing. Two of the three housing apportionments have been taken out of crofting and are now holiday homes.

The house on one housing apportionment was used for holiday letting from the start and was then sold on as a holiday house at a price considerably beyond the means of local people.

5.1.2 Why it is a problem:

- The hill grazing is held in common, with the management of the land decided by a committee of elected shareholders. On a hill grazing as small as in Camuscross, the shareholders are reluctant to let land out of agricultural use, but have been willing to do so when they thought it was to provide a house for a local crofter.
- Because of this sense that the grazing land ‘belongs’ to all shareholders in common, if a private individual takes the land out of crofting and makes a financial gain by selling it on, it is felt to be unjust.
- As a result of these cases, the grazings committee is likely to be much more reluctant to look favourably on an apportionment for a private house, even if the case appears to show genuine need – such as a crofter who cannot get access to build on their croft.

5.1.3 Who is responsible:
The Legislative System
The Grazings Committee
The Individual Crofter

5.1.4 The Remedy:

- Legislative change is needed to prevent misuse of housing apportionments in this way. At the very least, an occupancy requirement could be attached to any house built on an apportionment, which is linked to a housing burden, to allow the grazings committee and the landlord to benefit from the value of the house plot if the house is sold out of crofting (i.e. not to the incoming crofter).
- The Grazings Committee could be encouraged to become more confident about expressing its opinion if it is not happy with a situation
- The Individual Crofter should be encouraged to think about the consequences of their actions for the future of crofting and the community in their township
5.2 **Bought Crofts: Owner-Non-occupiers**

This section contains two separate examples. One focuses on the problem of speculation, the other on the problem of neglect. In both cases the owners of these bought crofts are long-term absentees. Although the examples here focus on ‘owner-non-occupiers’ it is important to note that the problems of speculation and neglect apply to tenanted as well as to bought crofts.

5.2.1 **SPECULATION – The Problem:**

One croft was split in two and one half of the croft has had an owner-non-occupier for more than 25 years. The croft house was used for holiday letting; a second house was built on the croft also for holiday letting; both houses and one acre of “croft land” have now been put on the open market at offers over or £590,000 for both houses and the land; the seller is not willing to sell the croft land separately. The selling agent makes no mention of the legal responsibilities attached to croft land in the advertising.

5.2.2 **Why is it a problem?**

- Arable land is a precious resource which should only be built on for genuine reasons, and when there is no other choice of house site.
- An already very small croft was allowed to have a second house built on it for the specific purpose of holiday letting when the original croft house was already being used for this purpose by the absentee owner-occupier.
- According to the selling agent, the two houses are bringing in an annual gross income of almost £50,000. Not only is this money not being spent locally, the business is in direct competition with local businesses, including those of crofters, who have diversified into holiday letting.
- The local crofting community only heard about the sale by chance; the Crofters Commission was unaware of the sale; it seems that when a croft has been bought, although technically still covered by crofting legislation, it can change hands with no checks or controls; in effect, this small piece of land in Camuscross has entered the free market and is no longer a croft.
- The new owner is likely to have no understanding of the legal responsibilities of owning land covered by crofting legislation, or the (supposed) requirement to either occupy the croft, or put in a tenant.

5.2.3 **Who is Responsible:**

The System

The Crofters Commission

The Individual Crofter (owner-non-occupier)

5.2.4 **The Remedy:**

- A legally enforceable requirement that all selling agents must make clear, using specified wording, what the legal responsibilities are for any prospective purchaser of owner-occupied crofts.
- The Crofters Commission must make use of their existing statutory powers to deal quickly and effectively with blatant cases of speculative absenteeism, particularly those which damage the local community.
- The Individual Crofter should be encouraged to think about the consequences of their actions for the future of crofting and the community.
5.2.5 NEGLECT – The Problem:
One croft and crofthouse has been empty (apart from one short tenancy in the house when the house was already below tolerable standard) for approximately 40 years. The house is now derelict. The garden and croft is also infested with Japanese knotweed.

5.2.6 Why it is a problem:
- The house has now deteriorated to such an extent that it is dangerous, and is an eyesore, in the centre of the village, detracting from the amenity and value of surrounding properties.
- Although 20 years ago the house could have been made habitable with some work, it is now beyond repair – a home has been lost to the local community.
- The Japanese knotweed is threatening to spread to neighbouring gardens and crofts and will make building or croft work with machinery unlikely or very difficult. There are prohibitions against development on land where there is knotweed because of the risk of spread.
- There are no fences on the croft.
- The fact that the Crofters Commission has presided over such damage and neglect to a croft house, buildings and land over such a long period, erodes crofters’ belief that it cares about crofting.

5.2.7 Who is Responsible:
The Crofters Commission
The Landlord
The Individual Crofter

5.2.8 The Remedy
- The Crofters Commission must make use of their existing statutory powers to deal quickly and effectively with blatant cases of absenteeism, particularly those which result in serious deterioration of the buildings and land, and which adversely affect the local community, and where the Grazings Committee has asked for action.
- The Landlord should support an active Grazings Committee in their efforts to put pressure on the Crofters Commission to deal with absenteeism, especially where the state of buildings on an absentee croft is having a detrimental effect on the surrounding area.
- The Individual Crofter should be encouraged to think about the consequences of their actions for the future of crofting and the community.
5.3 **Absentee tenants**

5.3.1 **The Problem:**
There are 11 crofts held by nine absentee tenants or owner non-occupiers. In this section we will give two examples of the challenges that crofters face because of absenteeism in Camuscross.

We have also made clear in section 4.2 the value that a returning absentee with family connections can bring to a township, and suggest ways (below) that these absentees can be encouraged to return and their land kept in good heart while they are absent.

5.3.1.1 One croft had an absentee tenant for more than 40 years. In the mid 1990s the Crofters Commission made an attempt to take action on absentees in Camuscross and as a result the croft was sublet to a local crofter twice. After that, the Commission continued to write intermittently and the absentee tenant put the croft and house on the market at a price considerably above what any local person could pay. Against the wishes of the Grazings Committee, and despite the fact that a very suitable local tenant was interested in a tenancy of the bareland croft (to the extent of asking the advice of a digger contractor who said it would be possible to put in an access to it), the Crofters Commission approved the assignation to someone from central England. This approved tenant planned, to the scepticism of the local Grazings Committee and other crofters, to build riding stables on the poor, three acre croft.

Ironically, while the Commission would not allow the croft to be split off from the croft house because it said there was no vehicular access, it allowed a five year plan from the proposed tenant from England for riding stables that required the crofter to have vehicular access to the croft. Since this couple took over the house in early summer 2008 and the tenancy of the croft in November 2008, the croft has remained unused by the tenant and the house is being advertised on the internet for holiday letting.

As a result of not listening to local opinion, the unintended result is that the Crofters Commission has been responsible for replacing an absentee crofter with family connections to Camuscross, with an absentee crofter with no family connections to the place.

5.3.1.2 One croft has had three generations of absentee tenants. The house is used as a holiday house by the family. The croft is neglected, unworked, infested with rushes, bracken and ragwort and put to no purposeful use. A shed on the croft is close to collapse.

5.3.2 **Why it is a problem:**
- Absentee tenants cannot or do not work or care for their croft effectively, with the result that their land often becomes rank and infested in weeds, which then spread seeds to neighbouring crofts which might be being worked; or fences or buildings are not maintained. It will take many years of effort for any incoming crofter to bring the land back into heart and rebuild buildings and fences.
- Absentee tenants contribute very little to the community: they cannot serve on the Grazings Committee or help with township development projects; they do not spend their money in the local community and cannot take part in community events.
- The croft house of an absentee tenant may sit empty while local people live in rented accommodation or have to stay with relatives
- If an absentee tenant uses their house for holiday letting, the profit is not spent in the community and the business is in direct competition with other crofters or local people.
• When the Grazings Committee is asked to comment on proposed non-family assignations, their response is based on the five year plan of the proposed tenant. If the assignation is approved, but the tenant subsequently fails to adhere to their five year plan, and neither the Landlord, nor the Crofters Commission take any action, this further erodes the Grazings Committee and individual crofters’ trust in the regulatory system.

• When absentee tenants with a family connection to a place are encouraged to return they can bring skills and enthusiasm to the area.

5.3.3 Responsible:
The System
The Crofters Commission
The Landlord
The Grazings Committee
The Individual Crofter

5.3.4 The Remedy:
• The new legislation proposes stronger action on absenteeism. These proposals, if sensitively but rigorously implemented, could help to resolve this problem. For example, making it easier for tenants and owner-occupiers with a family connection to a place who have good reason to be absent for a predetermined time to sub-let their crofts could allow them to retain their attachment to the community while ensuring that the land is worked and that someone in the community is able to work the land.

• Regardless of proposed new legislation, the Crofters Commission must make use of their existing statutory powers to deal quickly and effectively with blatant cases of absenteeism and neglect, particularly when it has been asked to by the Grazings Committee, and in those cases where there is no family connection to the township.

• The Crofters Commission and the Landlord must take greater responsibility for ensuring that five year plans of incoming crofters are adhered to, and action taken if they are not.

• The Grazings Committee already has the right to complain to the Commission if they believe that a crofter is in breach of the statutory conditions relating to the use or neglect of their holding. If they believe that it would be in the wider crofting interest to do so, Grazings Committees should be encouraged to make use of this right.

• The Individual Crofter should be encouraged to think about the consequences of their actions for the future of crofting and the community.
5.4 **Croft Access**

5.4.1 **The Problem:**
Within Camuscross, the Crofters Commission and the Landlord have allowed a number of decoftings of house and garden ground across the entire width of crofts, leaving no vehicular access to the croft. One of the most active crofters in Camuscross has worked his croft for 17 years through the goodwill of a neighbour, who was willing to allow the tractor to drive past his house and through his croft to gain access. Now that the croft has been taken over by someone else and the house and garden has been decofted, the crofter will have to rely again on the goodwill of the new owner of the house and tenant of this croft in order to gain access to his own croft. If a permanent solution cannot be found, it could be that the croft will no longer be worked. Crofts with no access are likely to become more common as croft houses that have been decofted are separated from the croft and sold on to non-crofters.

5.4.2 **Why this is a problem:**
- It is almost impossible to work a croft well if it does not have vehicular access to it.
- If the original croft house has been decofted, the loss of access also means that an incoming crofter must build any house or croft buildings on the hill grazings.

5.4.3 **Who is responsible:**
The System
The Crofters Commission
The Landlord

5.4.4 **The Remedy:**
- The introduction of legislation enabling the compulsory purchase of land would allow the Landlord or possibly another agency to ‘recroft’ land to create an access for a croft that had lost it.
- New legislation should require a crofter who is decofting his house and garden ground to first establish a proper access to the croft before a decofting can be allowed.
- The Crofters Commission and the Landlord must ensure that access to crofts is always preserved when decofting of house and garden ground applications are considered.
- The Crofters Commission must ensure that their agents – officers of SGRPID – make on-the-ground checks, rather than desk-based assessments of any proposed access, to ensure that they are feasible.
5.5 Key agencies

5.5.1 The Problem:
We understand that when a recent planning application was made on a croft in Camuscross, Crofters Commission officials were not sent the application and were unaware that it had been approved until after the decision making process was over.

5.5.2 Why it is a problem:
In 2005 there was a highly controversial case in Taynuilt where the Crofters Commission allowed an absentee owner-occupier to decroft his entire holding in order that it be turned into a luxury housing development. One of the arguments put forward by the then Crofters Commission chair for approving the decrofting was that the local council had already granted planning permission for the development and “it would be wrong for crofting legislation to be used to thwart planning decisions made by the democratically elected body”. A strong body of opinion, led by Ross, Skye and Inverness West MSP, John Farquhar Munro, argued for the Commission’s representations to be taken into account on any planning application involving croft land, thus closing the loophole exploited at Taynuilt. At the time the then government minister responsible for crofting, Rhona Brankin, replied: “I have had discussions with Malcolm Chisholm, who is the minister responsible for planning, with a view to having the Crofters Commission designated as a statutory consultee in the planning process. I understand that ministers aim to achieve that goal through secondary legislation under the Planning etc (Scotland) Bill.”

We understand that this secondary legislation was not implemented, and while in the case in Camuscross the development we have highlighted may not be a contentious one, it appears that the loophole exploited in Taynuilt is still open.

Inappropriate developments like the one in Taynuilt can cause great distress in crofting communities, and are also very harmful to the reputation of the Crofters Commission. It is essential that the Crofters Commission ensures it is included in the ‘key agency’ process (or, better yet, is made a statutory consultee on all planning applications on croft land) because if it fails to do so it will risk being implicated in other ‘Taynuilts’ and lose further credibility in the crofting communities.

5.5.3 Who is Responsible:
The System
The Crofters Commission

5.5.4 The Remedy:
- It is vital that systems are put in place to ensure that the Crofters Commission can contribute meaningfully to planning applications on croft land and prevent abuses, such as that in Taynuilt, which undermine community and the crofters’ faith in the system.
- A scan of all relevant local authority planning applications (which are available online) on a monthly basis by a designated member of the Commission’s staff could help ensure there are no unintended holes in the regulatory net.
6. The Frustrations

“An rud anns an tèid dàil thèid dearmad”
*Delay brings neglect*

**Engaging the Crofters Commission**

6.1 Crofters’ Response

In the last number of years crofters in Camuscross have begun to take action to resist the effective loss of land and community that are associated with the failure of the regulatory system to protect crofting. In 2008 the grazings committee decided to contact the Crofters Commission asking them to intervene to protect croft land in the township.

6.2 Timeline of request for action on absenteeism in Camuscross

**Early 2008:** The Camuscross Grazings Committee agreed to ask the Crofters Commission to take action on the growing number of absentees. No formal response to this letter was received.

**Summer 2008** The Grazings Clerk was advised by an officer of the Commission that no action would be taken on absenteeism until after the outcome of the Shucksmith enquiry had been known.

**Nov 2008** Two crofters met Drew Ratter, the Chairman of the Crofters Commission at a conference about local food and asked what the Commission’s position on absenteeism was. Drew offered to visit Camuscross to discuss the issue.

**Dec 2008** Meeting of Drew Ratter, Hugh MacIntosh and Angus MacHattie of the Crofters Commission with Camuscross Grazings Committee and others where various issues were discussed, principally absenteeism and neglect. The crofters were assured that the Commission could and would take action on absenteeees “where a community requested it”.

**May 2009** A crofter approached one of the Commissioners (at the meeting held to discuss the draft bill) to ask about the Camuscross request for action on absenteeism. The Commissioner said that a committee had been set up to take action on absenteeism, but it was not clear whether Camuscross was one of their likely targets for action.

**June 2009** An officer of the Commission spoke to some of the Camuscross crofters at a conference and indicated that there was an intention to take some action on both absenteeism and problems with access in Camuscross, although a timetable for when this will happen is not yet clear.
7. The Achievements

Crofters have played a very important role in recent community developments in Camuscross. This gives a clear indication of the extent to which the crofting system can be a vital component in building vibrant and resilient rural communities, allowing them to find and develop solutions to their problems, and manage their assets for wider community benefit.

7.1 Township Development Scheme

This crofting improvement scheme was initiated by the Grazings Committee and funded through the Scottish Government. A new fank was built and a forestry and woodland regeneration scheme developed. Although the forestry scheme has not been a great success, because of predation by the landlord’s deer, this was the first development project undertaken by people in Camuscross. However, the fank is a success, and is used by stock owners.

7.2 Rural Stewardship Scheme

Luckily the crofters were not disheartened by their first project and applied for another scheme under the Rural Stewardship programme. This scheme involved fencing around scrub trees to allow regeneration, which had the double benefit of allowing the use of a part of the hill grazing which was not being used because it was not fenced.
This project resulted in the resurgence of joint working between crofters, and a rediscovery of the social benefits of working side-by-side with your neighbours. Groups of crofters worked together to build a fence over the winter of 2006-7, and the project saw the first crofting activity which involved non-crofters; a muirburn in the spring of 2007 involved twenty two people, including those who brought out tea, and which turned into a memorable and social occasion.

**Muirburn on the common grazings: the team well-prepared with beaters**

### 7.3 Partnership Working between Crofters

Partnership and communal work practises are being revived as a natural part of life in Camuscross, with groups of people working together on handling livestock, potato planting and lifting, and helping each other out when they see a need. Tractor and sausage-making machinery is jointly owned by two families and those with tractors regularly help those without.

There has been discussion about the idea of more joint potato planting next year, with some people keen to explore the idea of using three tractors and potato planters to form a cultivation team for those who want potatoes planted on their land in this way.

**Communal potato planting, spring 2009**

Informal crofting arrangements have developed between neighbours, such as a younger crofter working an older crofter’s land, or one crofter using another croft for grazing.
7.4 **The Honesty Box**

Two crofting families set up an Honesty Box in the centre of the village, enabling crofters (and those with gardens) to sell eggs, honey and some vegetables. This allows non-crofters and visitors access to food produced in the township – and raises the profile of crofting.

It is fitting that the box being used once belonged to the grandfather of one of the returnee tenants whose family regularly stocks the box with produce from their croft.

7.5 **Affordable House Sites**

Camuscross Community Steering Group was formed as a result of crofters identifying a piece of hill grazing for affordable house sites, which had been cut off from the rest of the hill when the new road was built. The new group was formed to take the idea forward; it has since grown in strength and ambition, and is now a fully fledged and very successful community company - Camuscross & Duisdale Initiative – which is exploring a number of projects for community benefit. Eight of the nine directors come from crofting households.

7.6 **A Community Herd?**

As a result of the success of the increased partnership working, it was agreed to investigate the possibility of getting the let of a piece of land which is not in crofting tenure and is unused by the Landlord – who has recently agreed to lease the land.

The land and proposed scheme has yet to be assessed, however the thinking behind a community herd is that it could allow people without a croft and also non-active crofters to become partners in livestock ownership, helping to further raise the status and community benefit of local food production and crofting practises.
8. The value and values of crofting

8.1 Why previous attempts to legislate have struggled
In general, as responses to past and current crofting legislation have shown, crofting communities have been distrustful of repeated government plans to bring radical changes to their way of life. The fierce opposition in 2005 to the proposals in the previous Crofting Reform Bill is evidence that many crofters feared that the Scottish Executive intended to use legislation to take crofting towards an unregulated private landownership system which would serve to disintegrate the strong ties of community that still characterise many crofting townships.

Crofters’ non-proprietary relationship to the land, and their determination to preserve that relationship, has shown an extraordinary resilience, despite operating over hundreds of years within an increasingly capitalist system.

Most crofters in Camuscross have not used their land for speculative housing developments – despite the financial incentive to do so.

An increasing number of crofters in Camuscross are agriculturally active – despite the lack of financial incentive to do so. These facts indicate and suggest that a surprisingly large number of crofters still remain faithful to this distinctive crofting ethos in spite of social norms which are at odds with it.

The Highland Free Church Professor of Theology, Donald Macleod, much of whose childhood was spent in a crofting township in the north of Lewis, has described the nature of life in the crofting areas as essentially communal. Such a way of life sits uneasily with the ethos of an individualistic consumer society. To decision makers based in Edinburgh it may sometimes appear as if crofters, in defence of what remains of their community based ethos, are being awkward or obstructive to plans which the decision-makers believe will advance crofters into a more individualistic and capital oriented mind-set and way of living.

What appears to Edinburgh based decision makers as obstructivism or conservatism is, at least in part, a response to this prolonged clash of values during the uneasy relationship that generations of crofters have had with government and its agency, the Crofters Commission, whose duty is to maintain and promote the crofting system.

Often government plans for crofting are perceived by crofters as emanating from outwith the crofting counties and designed to fulfil policy objectives that are not connected with, or even incompatible with, the crofting ethos.

As a result, crofters’ responses can often seem overly critical to government officials and ministers who have to deal with them.
8.2 **Cultivate crofting, cut carbon and create community**

Awareness, and concern, is growing about the interrelated issues of food insecurity, climate change, food miles, carbon footprints, and the dominance of supermarket chains with a ‘just-in-time’ distribution system. There is also increasing awareness of the importance of locally and sustainably produced agriculture in helping to create a resilient food economy.

Crofting, if properly regulated, supported and encouraged, is a system ideally designed to play a part in the solutions to these problems and therefore to be ecologically and socially beneficial to our wider society. Crofting provides each crofter with a home and the ability to produce food for their own consumption or sale. It is an agriculture that is respectful to the land, to the environment and to a sense of place.

It is also about community. Crofting has in the past, and if supported and protected still can in the future, play a central role in retaining and encouraging vibrant, hard-working, enterprising and resilient rural communities. It is on the land that crofters come together, whether in gathering cattle, shearing sheep, planting potatoes or making hay. By doing so they maintain the distinctive sense of identity that crofting has in the Scottish psyche.

This is not a new argument. In 1954 the Taylor Report, which led to the founding of the Crofters Commission, concluded: “Crofting communities should be preserved because they embody a free and independent way of life which in a civilisation predominantly urban and industrial in character is worth preserving for its own intrinsic quality.”

However, the Taylor Commission also concluded that there was not the talent within crofting communities to preserve and promote that way of life. As a result the Crofters Commission became an appointed body. Recognition that such talent does exist in crofting communities is the basis of the current proposals to democratise the Commission.

The evidence that such talent, and confidence, exists comes from many sources.

For example, in the crofting heartland of the Western Isles there has been, in the last decade, a transformation in the patterns of landownership. Some 70 per cent of the population now live on land that is publically or community owned. The amount of community owned land in the islands is inexorably rising as people from Lewis, Harris and Uist realise the potential of community ownership and empowerment.

In the words of the leading Scottish rural affairs academic, John Bryden, the Scottish Parliament has begun the process of creating ‘a community centric land reform legislation’. In the social transformation such legislation is intended to create, it is crofting communities that are showing the confidence and the talent in leading the way.

This evidence is supported by reports from organisations ranging from the Carnegie Trust to DTZ Pieda which have found that the crofting areas contain both a strong sense of community and are engaged in some of the most inspiring rural development projects in the whole of the UK and Ireland.

The Highlands and Islands community groups that are contributing to these developments are often led by crofters – for example in our own area’s group, the Camuscross and Duisdale Initiative, eight of the nine directors come from crofting households.
9. Conclusion

Section Six of this report includes some detailed recommendations of changes to crofting regulation that we would like legislators to consider. However, many of the recommendations in Section Six would not require change to primary legislation.

Although this report is not a direct response to the current draft Crofting Reform Bill, this conclusion will offer two recommendations that pertain to the draft Bill’s proposals, and in doing so it will also engage with some of the deeper issues foundational to the crofting way of life. It seeks to be part of a dialogue exploring new directions for crofting in light of wider social, food security and environmental issues, some of which we have touched on earlier in this report.

This report has outlined the range, scale and interconnectedness of regulatory problems that exist within one small crofting community. These are all practical examples of the disintegration of the crofting system and several of them add evidence to the claim that the rate of disintegration has increased in recent years.

The report also outlines examples of where the Crofters Commission has not intervened to fulfil its legislative requirement to support the crofting interest in Camuscross. External regulation, on its own, has proved unable to help this township preserve its crofting ethos. In Camuscross we are trying a new approach. Along with a wider community initiative group in which crofters are an integral part, the township’s crofters are seeking to initiate and generate change from within.

The Grazings Committee has found the self confidence to approach the Crofters Commission and ask for change in order to free up land for potential young crofters and young people who want to make their lives here. The active crofters in the township are keen that abandoned and misused land is worked and made productive.

As our report has tried to make clear, in this township we have suffered, and are still suffering, examples of misuse of and capitalisation on croft land and common land. Each time this occurs it further weakens the sense, still prevailing among some crofters, that the land is more than merely a private economic resource. This indigenous understanding of stewardship of the land as a resource to be treasured for the livelihood of future generations sits uneasily with the prevailing short-term consumer mentality in our society.

However, as our society struggles to come to terms with the reality of ecological limits to growth, this understanding of the land as a place where a community of people make their lives in the long term is re-emerging as one which makes sense. For crofting townships where this sense of place and community is still felt to be important, it is essential that ways are found to support and protect it.
One particular recommendation we would ask legislators to consider in the current legislative process is to remove the right to assign a croft tenancy to non-family members. Crofting began as a hereditary system of tenure and the provisions of 1886 only allowed the crofter to assign within the family. Removing the right to non-family assignations would remove at a stroke much of the free market in croft tenancies. In a situation where there is no family member willing or able to take on the croft tenancy, a non-family assignation could be decided by the Commission in consultation with the landlord and the local grazings committee (on the basis of agricultural experience and local connection).

Proposals such as this one will inevitably raise debate. However, as the report makes clear, inaction is no solution – inaction is leading to the steady erosion of the crofting system and of the communities it supports.

A properly regulated system is crucial. Although this report has shown examples of where the regulatory system has failed the crofting interest, we also show that a regulatory system can work when decision-makers (in the case of Camuscross it was the croft entrant policy decisions of the landlord in 1991) are genuinely concerned with intervening to maintain the crofting community’s interest, rather than a narrow financial self-interest.

In the months ahead we need good leadership from our Scottish Parliament to reform the Crofters Commission into a decision making body with the crofting interest at its heart and the will to tackle the issues that need to be tackled if crofting communities, and the people who choose to be part of them, are to thrive.

Crofters discussing the Golden Wonders on a joint potato planting day, Spring 2009
One key to creating thriving crofting communities is to encourage local economic development. The case for root and branch reform of the agricultural support system has been overwhelmingly made by a series of authoritative reports. The only barrier to reform is now vested interest. Leadership from the Parliament and the Commission is essential to sweep that barrier away. More broadly, the proposal in the crofting reform bill that failed banks become the lender of choice to crofters has received no support at all.

- Rather than removing all developmental functions from the Commission we suggest that consideration is given to an elected Commission initiating (or becoming) a government sponsored credit union for crofters and others in the crofting counties. Local credit unions and farming co-operatives are features of the Irish rural economy that are proving remarkably resilient in spite of the country’s massive financial difficulties (especially in its banking sector). Hand-in-hand with retaining croft grant schemes, the development and initial sponsorship of a crofting credit union to support economic activity in the peripheral Highlands and Islands would be an enterprising move by government in a time of financial austerity.

Whether it is given lending powers or not, an effective Crofters Commission will be essential if the potential benefits of crofting are to flow and spread. It appears at the moment that it has at least some of the powers required to help communities realise their potential but may lack the motivation to do so.

The energy Camuscross crofters are demonstrating within our township gives an exciting opportunity for the Scottish Government, the Crofters Commission, the landlords and development agencies to support and partner us in our regeneration plans, and to use us and other similar crofting townships as an indication of what might be possible if a supportive and sensitive regulatory framework, properly enforced and efficiently delivered, is put in place.

"Cuir do mhuingean 's an talamh, cha d' fhàg e falamh riabh thu"
Put your trust in the earth, it never left you empty

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Restart crofting…

…. and reap a rich harvest!
Appendix I

The purpose of the report

This report was prepared on a voluntary basis by two members of crofting families in Camuscross, to give details of some of the challenges our township faces and to support the Camuscross Grazings Committee’s call for the Crofters Commission to take action on absenteeism and neglect on croft land in the township. It has also been timed to inform parliamentarians and other interested parties during the passage of the latest Crofting Reform Bill through the Scottish Parliament.

1. As regards the current legislative process, we hope that it will meet the following needs:

   (i) to provide clear and detailed information about the range, scale and interconnectedness of the issues that threaten the future viability of crofting.

   (ii) to show how these issues are affecting a real crofting community – and to suggest, by describing their range, scale and interconnectedness in one community, the potential impact these issues may be having on the whole of the crofting areas.

The report will show that in recent years Camuscross has become more vibrant as a crofting community. Yet the extent of the problems we face present some formidable obstacles to our future prospects, and we wonder - with some pessimism - about the situation in other crofting communities. It is clear that the scale of some of our problems has increased in recent years and because the pressure on the system seems to be increasing, it is imperative that the current crofting legislation does not become mired in party political dispute. Opposition to the previous Crofting Reform Bill (leading to its drastic last minute revision) was necessary to bring into stark relief the differing priorities of Government and crofters. Nearly five years have elapsed since then. As our report makes clear, the stress to the integrity of the crofting system has not slackened in that time.

If, in this latest reform process, our Scottish Parliament fails to bring about meaningful legislative change to support hard-pressed crofting communities it will be a failure for all the political parties. It will mean that our political system has undermined the efforts of communities like our own to retain the social, cultural and agricultural spirit of crofting.

2. As regards the wider crofting agenda we hope our report will meet the following needs that we have perceived:

   (i) to inspire the Crofters Commission into immediate practical action to support the active crofters of Camuscross and other similar townships.

   (ii) to produce a report that fulfils (albeit on a local level) the Committee of Inquiry on Crofting's recommendation of a 'State of Crofting' report, in the hope that it may act as a template for other communities to present their cases to a wider audience.

   (iii) to inspire and act as a template for the reformed Crofting Commission to compile its own wider 'State of Crofting' report which will allow it to focus its efforts on the issues that matter to crofters. It also suggests that if the Commission were committed to supporting a participatory and endogenous approach to crofting development this could have multiple benefits – creating ‘The State of Crofting in Camuscross’ report has also created an opportunity to raise awareness about crofting in our community as well as stimulating interest and debate.
Appendix II

Note on how the report was compiled

All facts and figures were collated by using local knowledge by people who work the land and take great interest in it, and checked by office bearers and committee members of the grazings committee.

The State of Crofting in Camuscross 2009 report was circulated to members of the grazings committee. The committee decided to make comments as individuals rather than as a committee. Seven members of the committee met to discuss the report and each member gave suggestions for changes or amendments. All committee members were either very supportive or broadly supportive of the report and suggested fairly minor changes.

At the grazings committee’s request, the report was then circulated to all other resident crofters, asking for comment by a certain date.

Response from other crofters:
Two crofters praised the report
One crofter praised the report, with a few provisos, which he gave as a number of constructive suggestions for improvement of the contents, and which have been incorporated into the report.
One crofter was very critical of the need for the report, disagreed with a number of points and felt it an intrusion into crofters’ private business.
No response was received from the other resident crofters.

Therefore, of the 22 resident crofters:
Ten crofters have said they support the report
One crofter has said they do not support the report
Eleven crofters have not expressed an opinion
Appendix III

Sources

Bryden, John and Geisler, Charles; ‘Community Based Land Reform – Lessons from Scotland’; June 6, 2004. (Draft #8 of a Paper to be presented at the IRSA XI World Congress of Rural Sociology Trondheim, Norway in July 2004).


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Draft Crofting Reform Bill 2009.


Fraser Darling, Frank; ‘Crofting Agriculture. Its Practice in the West Highlands and Islands’. Oliver and Boyd: Edinburgh; 1945.


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Nicolson, Alexander; ‘Gaelic Proverbs and Familiar Phrases’; MacLachlan & Stewart; 1882

No Author Given; ‘Islanders have best community spirit’; Stornoway Gazette (page two); 13th March 2008.

Royal Society of Edinburgh, Inquiry into the Future of Scotland’s Hill and Island Areas, August 2007


Scottish Agricultural College Rural Policy Centre; ‘Farming’s Retreat from the Hills’; Scottish Agricultural College 2008
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Community Right to Buy Regulations

At its meeting on 13 May 2009 the Committee took evidence from Scottish Government officials on the Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009 (SSI 2009/156) and raised questions on the process of re-registering community interest in land. The Minister for Environment wrote to the Committee on 14 May agreeing to re-examine the re-registration process. The Minister wrote to the Committee again on 16 December to provide details of arrangements that have been put in place for the re-registration application process. The Convener replied on 21 January advising the Minister that the Committee has obtained agreement from the Conveners Group to commission research into the effectiveness of the Land Reform (Scotland) Act 2003. The letters can be read online at:

Minister’s letter dated 14 May 2009:

Minister’s letter dated 16 December 2009:

Convener’s letter date 21 January 2010:

Common Fisheries Policy Reform

The Scottish Government has responded to the Committee’s report on the reform of the Common Fisheries Policy. The letter can be read online at:

**Water Quality (Scotland) Regulations 2010**

The Minister for Environment has written to the Committee providing an update on the Scottish Government’s plan to introduce an urgent SSI to amend domestic water legislation in order to comply with the European Commission’s Reasoned Opinion. Members will recall that a copy of a letter from the Minister to the Convener of the Subordinate Legislation Committee was sent as part of the most recent memo about forthcoming subordinate legislation. Both letters can be read online at:


**Reservoir Safety in Scotland: A Consultation Document**

The Scottish Government has issued a consultation on reservoir safety in Scotland. Responses should be submitted by 18 April 2010. Further details on the consultation can be read online at:

http://www.scotland.gov.uk/Publications/2010/01/22134722/0

**Cross Party Group on Food**

John Scott MSP, in his capacity as Co-Convener of the Cross-Party Group on Food, has written to the Convener of the Transport, Infrastructure and Climate Change Committee on the subject of climate change legislation and food procurement. The letter is in Annexe A.

**Scottish Natural Heritage**

Scottish Natural Heritage has submitted a briefing paper to the Economy, Energy and Tourism Committee entitled “Planning and the Natural Heritage” which members may wish to read. The briefing paper is in Annexe B.

**Brussels Bulletin**

The monthly Brussels Bulletin produced by the Parliament’s European Officer is available online at:

LETTER FROM THE CO-CONVENER OF THE CROSS PARTY GROUP ON FOOD TO THE CONVENER OF THE TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE COMMITTEE

Scottish Climate Change Legislation and Food Procurement

At its last meeting on November 18th, The Scottish Parliament’s Cross Party Group on Food (CPGF) recommended that when considering any future review of Scottish Climate Change legislation, supplementary guidance is issued to the public sector on the impact of food procurement on greenhouse gases (GHG). Additionally, in the Scottish Climate Change Declaration, recognition should be made that purchasing food sustainably can contribute significantly to achieving carbon and GHG reduction targets. Such an approach is also consistent with many of the aims of the National Food and Drink Policy.

The level of reductions that could be obtained through food procurement will depend on many factors. These factors, however, should be considered to ensure that at least in the public sector, spend is able to support the attainment of climate change goals.

The CPGF believes that while this is a complex area, it is important that food procurement is part of the Scottish Government’s strategy to meet its 2050 target of an 80% reduction in emissions.

John Scott MSP  
Co-Convener Cross Party Group on Food

PLANNING AND THE NATURAL HERITAGE:  
Scottish Natural Heritage’s contribution to planning reform

Our approach to planning is grounded in a conviction, borne out by recent studies, that Scotland’s nature and landscapes are a major economic asset and are fundamental to Scotland’s attractiveness as a place to live and do business. Scotland’s nature and landscapes, and how we manage them, are therefore crucial to the present government’s overarching objective of increasing the country’s rate of sustainable economic growth.

Our role in the planning system is an advisory one. It helps those charged with preparing plans and determining applications to understand and assess the significance of the natural heritage interests that could be affected.

We are committed to playing our full part in implementing the Scottish Government’s planning reform agenda. This involves in particular:
For information

- working with others to help make good development happen in the right places;
- helping to deliver a faster planning process by focussing on development planning and the pre-application stage of development management, and by making our data, information and guidance more easily available; and
- focusing our efforts on proposals which could significantly affect the quality and enjoyment of Scotland’s natural heritage.

This briefing summarises how, in accordance with these aims, SNH is assisting the Scottish Government and Planning Authorities (PAs) to modernise the planning system to make it faster and more inclusive.

**Upstream engagement**

Our approach to planning will place a greater emphasis on influencing the future pattern of land use at the strategic level. We shall adopt a consistently collaborative and proportionate approach to our involvement in development management. Our role will be to encourage better proposals and to help ensure decisions on planning applications are made quickly on the basis of good information. We shall work with developers to help them to understand natural heritage issues and to find ways of realising their ambitions in an environmentally sensitive and sustainable way. We shall provide timely, clear, constructive advice to Planning Authorities as decision makers. Where problems arise, our goal will be to find solutions.

**National Planning Framework**

We shall continue to work with other stakeholders to ensure that National Developments are delivered on the ground with minimum adverse impact on the natural heritage. In particular, we have a key role to play in devising ways of assessing the environmental impacts of new types of development such as marine renewables. We shall continue to contribute to the development and implementation of the Central Scotland Green Network through our involvement in the CSGN Steering Group and by researching how green networks can deliver multiple benefits to Scotland’s wildlife and people.

**Development planning**

We are actively seeking early involvement in plan-making in order to shape emerging plans, rather than reacting to requests for input at defined stages. We shall champion Strategic Environmental Assessments as a key tool in choice making and highlight the role of Scotland’s landscapes and wildlife in creating distinctive and attractive places for people to live and work. We shall encourage strategic approaches to land-use allocations based on good environmental information and analysis and maintain our efforts to make information on the natural heritage more accessible to Planning Authorities and other stakeholders.

**Development Management**
We shall work with others to help good development happen in the right places as envisaged by the development plan. We can ease the path of good developments by:

- identifying possible adverse impacts on the natural heritage at the pre-application stage
- specifying clearly the information essential to support an application
- advising on whether mitigation is possible and how it can be achieved
- identifying where, as part of developments, there are significant opportunities to enhance the natural heritage.

We expect planning authorities to identify and take account of impacts on landscape, biodiversity and species with special protection. We have advised local authorities of the types of proposals that they should refer to us. For those that they should be able to determine without SNH input we have guidance and training available. We shall take a proportionate approach in requesting information to assist decision making. We shall soon be embarking on a series of briefings with Planning Authorities to explain our new approach, which we hope in due course to formalise in a Service Level Statement with CoSLA. We have revised our Service Level Statement for Renewable Energy to set out the level of service that developers, their advisers and planning authorities should expect from us in the context of the modernised planning system.

We shall concentrate our efforts on advising on national and major developments, and on development proposals that raise issues of national interest, particularly those which could have significant adverse impacts on nationally important protected areas such as Sites of Special Scientific Interest (SSSIs), Natura sites and National Scenic Areas (NSAs). We shall if necessary object to proposals which would in our judgment seriously damage Scotland’s wildlife and landscape, but only after taking proper account of any wider public interests at stake.

Scottish Natural Heritage
21 January 2010