The Scottish Parliament

Environment and Rural Development Committee

27th Meeting, 2005

Wednesday 2 November 2005

The Committee will meet at 10.00 am in Committee Room 1

1. **Environmental Levy on Plastic Bags (Scotland) Bill:** The Committee will take evidence at Stage 1, by video-link, from—

   John Medley, Assistant Principal Officer, Collector-General's Division, Office of the Revenue Commissioners, Government of Ireland;

   John Curran, Group Environmental Executive, Musgrave Group, Cork;

   John Hayes, Sales Manager, J J O'Toole Ltd, Dublin; and

   Sean O'Suilleabhain, Waste Prevention and Recovery Section, Department of the Environment, Heritage and Local Government, Government of Ireland.

Not before 11.30 am

2. **Crofting:** The Committee will take evidence on issues arising from the Scottish Executive's consultation on a draft Crofting Reform (Scotland) Bill from—

   Rhona Brankin MSP, Deputy Minister for Environment and Rural Development.

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

   the Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005, (SSI 2005/460);

   the TSE (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/469); and

   the Reporting of Prices of Milk Products (Scotland) Regulations 2005, (SSI 2005/484).

4. **Items in private:** The Committee will decide whether to consider evidence received to date on the Environmental Levy on Plastic Bags (Scotland) Bill in private at its next meeting. The Committee will also decide whether to consider a draft report on the Bill in private at future meetings.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

Agenda Item 1	
Briefing paper *(for members only)*	ERD/S2/05/27/1a
Submission from the Office of the Revenue Commissioners	ERD/S2/05/27/1b
Submission from the Musgrave Group	ERD/S2/05/27/1c
Submission from the Department of the Environment, Heritage and Local Government	ERD/S2/05/27/1d
Agenda Item 2	
SPICe briefing paper on Crofting (SB 05/50)	ERD/S2/05/27/2a
Agenda Item 3	
The Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005, (SSI 2005/460)	ERD/S2/05/27/3a
The TSE (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/469)	ERD/S2/05/27/3b
Extract from the Official Report of the Subordinate Legislation Committee meeting held on 25 October 2005	ERD/S2/05/27/3c
The Reporting of Prices of Milk Products (Scotland) Regulations 2005, (SSI 2005/484)	ERD/S2/05/27/3d
Extract from the Subordinate Legislation Committee's 36th Report	ERD/S2/05/27/3e

Agenda Item 1

Environment and Rural Development Committee

2 November 2005
ERD/S2/05/27/1b

SUBMISSION FROM THE OFFICE OF THE REVENUE COMMISSIONERS

THE ENVIRONMENTAL LEVY – REVENUE'S ROLE

1. Introduction:

The Environmental Levy on the supply of plastic shopping bags at point of sale was introduced by the then Minister for Environment & Local Government (now Environment Heritage & Local Government) with effect from 4th March 2002. With certain exceptions, such as the supply of size-designated bags for loose meat, fish, fruit and vegetables, a levy of 15 cent (approximately 10 pence Sterling) is charged on each plastic shopping bag supplied to customers at point of sale. The Levy is designed to encourage shoppers to use long-life bags (which are also exempt from the Levy), encourage recycling, reduce pollution, and generally lead to a cleaner environment. Revenues collected by way of the Levy from those shoppers who continue to use plastic bags is lodged to a special fund (the "Environmental Fund"), established under the Waste Management (Amendment) Act, 2001 (q.v.), which is used to fund environmental projects throughout the country.

2. Legislation:

The underpinning legislation surrounding the operation of the Environmental Levy is contained in:

- The Waste Management Act, 1996 (No. 10 of 1996), as amended by:
- The Waste Management (Amendment) Act, 2001 (No. 36 of 2001).
- Section 50 (Protection of the Environment) Act, 2003 (imposition of interest on late payment of Levy).
- Statutory Instrument: "Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001 (S.I. No. 605 of 2001), signed by the Minister for the Environment & Local Government on 19th December 2001.

3. Revenue Role:

Revenue was appointed as collection agent for the Environmental Levy and the role of the Office was underpinned by a Service Level Agreement (SLA), signed by the Secretary General of the Department of Environment & Local Government and Commissioner Josephine Feehily on behalf of Revenue upon the introduction of the Levy.

4. Service Level Agreement:

Essentially, Revenue's responsibilities under the SLA are as follows:

- Consultation with traders and trade bodies on matters of collection and returns.
- Input to any business awareness campaigns on matters of collection and returns.
- Identification of accountable traders.
- Processing of returns and payments received from accountable persons.
- Carrying out verification checks relating to the accuracy of returns.
- Pursuit of accountable persons who fail to deliver returns and payments within the statutory time limits.
- Raising estimates where returns are not received or where liability is understated.
- Dealing with appeals against estimates raised.
- Deciding that it is not appropriate to pursue the collection of Levy due in certain individual cases in accordance with normal Revenue guidelines and practices in force for writing-off taxes.
- Dealing with complaints from accountable persons relating directly to Revenue's collection role.
- Pay over on a monthly basis of all amounts collected.

5. Collection Fee:

A collection fee in respect of ongoing costs to Revenue in fulfilling its collection role was included in the SLA. This consisted of an initial set-up fee of €1.2 million (2002 prices), together with an annual running-cost fee. The fee for the year ended 31st March 2005 amounted to €349,000 covering: maintenance of computer systems, quarterly returns issue, processing of returns/payments, accounting/funds transfer and compliance activity.

6. Registration:

Upon being appointed as collection agent for the Levy, Revenue decided to operate it as a 'minor tax' within its existing Integrated Taxation Services system (ITS). This system uses a customer-based tax collection approach, allowing each customer to be managed on a 'whole-case', rather than on an individual taxhead basis. The Levy was modelled on the existing VAT collection system within ITS, which facilitated its rapid introduction on a tried and tested platform.

In order to create a customer database for the Levy, it was decided to use the existing economic activity (NACE) codes from VAT for all wholesale traders. To ensure that no-one was accidentally excluded from the system, an insert was included to all VAT registered customers with their November-December 2001 VAT returns. This insert advised of the

forthcoming introduction of the Levy, that Revenue would shortly be in touch with traders whom it considered might have an obligation to operate the system and asked traders who supplied plastic bags, but who did not subsequently hear from Revenue, to contact the Collector-General's Division of the Office on a Lo-Call telephone number supplied.

The next step in the set-up process was the issue of a dedicated letter to all traders included in the NACE code scan. This took place in February 2002 and included a comprehensive 'Retailer's Guide to the Environmental Levy.' This guide was also made available on Revenue's website (q.v.) and an Irish language version was supplied to our Gaelic speaking customers. As well as providing operational details in respect of the levy, the mail shot also asked customers not using plastic bags in their business to contact Revenue, in order that their names would be removed from the register. Dedicated telephone help line and e-mail addresses were also made available in respect of subsequent enquiries. Response to this mail shot was quite positive and the initial possible customer base of over 34,000 was reduced to fewer than 30,000 before the first quarterly returns were issued. This number has since been radically reduced (see below) as a result of both proactive case working and the general movement away from plastic packaging at retail level.

7. Returns Issue:

Returns are issued to traders on a quarterly basis (although the first accounting period ran from 4th March to 30th June 2002). Returns are issued about three weeks before the end of an accounting period and must be completed and returned to Revenue's Collector-General's Division by the 19th day of the month after the end of each accounting period. The levy is unique in that it is the only tax/duty under the care and management of the Revenue where payment by cash/cheque is expressly prohibited. Instead, payment must be made by electronic means, such as via Revenue On-line Services (ROS) or via a Single Debit Authority (SDA). The latter is effectively a mandate, included in quarterly paper returns, where the customer authorises Revenue to make a single specified deduction from a nominated bank/building society by way of Direct Debit. SDA is by far the most preferred option for payment by Levy customers, although some of our larger customers pay via ROS.

Finally, the Regulations also make provision for Revenue to allow customers to pay other than by quarterly return. Such a facility has not been granted yet to any customer, but is now under active consideration by Revenue in respect of the smallest cases. Such a policy for small payers will assist both Revenue and the customer in minimising compliance costs.

8. Compliance:

In general, compliance rates for the Levy are acceptable. Approximately 90% of Levy yield comes from our top 10 customers, who are exemplary

compliant. Most of the yield now comes from the grocery and allied trades. Following the announcement of the introduction of the Levy, there was a marked movement away from plastic bags to paper replacements by the non-grocery retail sector, whist the grocery trade also moved to provide their customers with an alternative choice of 'long-life' replacements to plastic. This, together with a general move to environmentally friendlier alternative packaging and a customer contact campaign by Revenue from the first year of the Levy resulted in the removal of non-liable traders from the register. The result was a marked decrease in the customer base, which at the start of 2005, had reduced to some 14,744 cases.

As part of Revenue's compliance programme for the Levy, reminders are issued to non-filers (via ITS) in the month following the due date. The raising of estimates in respect of residual non-filers follows these and subsequent cases that still fail to file are referred to enforcement (Revenue Sheriff, Solicitor, Attachment Order etc.). Interest on late payment of the levy may also be charged, though usually only in the case of back-duty audits. To date, some €116,000 has been collected in this manner.

9. Yield:

Yield from the Levy (in real-time prices) has remained fairly static since its introduction:

Year	Yield in Euro	Sterling Equivalent (2005 rates)
2002 (March-December)	€7.18 million	£4.81 million
2003 (Full Year)	€12.75 million	£8.54 million
2004 (Full Year)	€13.53 million	£9.07 million
2005 (to 30th September)	€13.14 million	£8.80 million

10. Audit:

The Levy has been included in Revenue's audit programmes and is usually undertaken in conjunction with VAT audits. Audit guidelines have been prepared for staff and are available on the Revenue website (see below). In 2004**,** some 59 audits have taken place, yielding underpayments in the region of €130,000.

11. General:

In general, the Revenue view of the Levy is that it has been a success. The introduction of the Levy has resulted in a visible move away from plastic based packaging at retail level to other more environmentally friendly alternatives. Whilst the principal objective of the Levy has been to encourage a move away from plastic however, the yield still remains buoyant, which has had the effect of creating positive flows to the benefit of the Environmental Fund on the 'polluter pays' principle. In the meanwhile, Revenue will continue its work of eliminating non-liable traders from the register, collecting the Levy and addressing non-compliance and underpayment. We are delighted to have been appointed as collection for

this important project and look forward to working successfully with our colleagues in the Department of Environment, Heritage and Local Government for many years to come.

Useful Links:

- Legislation:
  http://www.irishstatutebook.ie/front.html
    - Waste Management Act, 1996 (No. 10 of 1996)
    - Waste Management Amendment Act, 2001 (No. 36 of 2001)
    - Protection of the Environment Act, 2003 (No. 27 of 2003)
    - Environmental Levy Regulations (S.I. No. 605 of 2001)
- Introductory Leaflet/Retailer's Guide:
  www.revenue.ie/revguide/environmentallevy.htm
- Audit Guidelines:
  www.revenue.ie/services/foi/s16_2001/envlevy.htm

Agenda Item 1

Environment and Rural Development Committee

2 November 2005
ERD/S2/05/27/1c

SUBMISSION FROM MUSGRAVE GROUP

Founded in 1876, **Musgrave Group** is one of the largest private companies in Ireland and is the largest supermarket group in the Republic of Ireland (RoI), holding 24 per cent of the grocery market.

As well as the SuperValu and Centra retail franchise business, Musgrave also manages Ireland's leading wholesale cash & carry operation, with nine large purpose-built facilities offering the traditional food and non-food ranges, as well as an extensive foodservices and delivered business. Musgrave Group operates in Great Britain through its Musgrave Budgens Londis (MBL) division, and based in the Alicante region of South Eastern Spain, where its Distribuidora de Alimentacion del Sureste SA (Dialsur) operates a chain of franchised retail outlets and a chain of Cash & Carrys.

Group turnover in 2004 was in excess of €3.7bn.

The scale of Musgrave Group enables independent retailers to compete effectively with major multiples in areas such as price, product range and quality of store design and layout.

Musgrave has an extensive environmental program which began in 1998 following a thorough review of its business activities, which focused on identifying the company's environmental impacts and the means by which its negative impacts could be minimised. The result of this process was the publication, in 1999, of the company's Environmental Policy Charter (see www.musgrave.ie), through which, we identified six key areas on which we undertook to focus our efforts;

- Communications
- Supplies and Products
- Waste Management
- Buildings
- Transport
- Reporting

As part of its environmental program, Musgrave has focussed on minimising packaging waste at source through initiatives such as the use of reusable transit crates. Currently, up to 25% of our chilled products are handled in in this way, and, in the case of individual categories, such as meat and poultry, the use of crates is as high as 90%. These crates are used in closed re-use loops between suppliers, our depots and our retailers, before being cleaned/sterilised and returned to suppliers. This system is estimated to save in the region of 2,500 tonnes of 'single-use' packaging in our Irish business annually. Opportunities are continually sought to broaden the scope of this program.

We have also set, and consistently achieved, annual waste recycling and packaging recovery targets over the last number of years at our own facilities and those of our retail franchise partners.
These are as follows:

- 2002: 50% Recycling
- 2003: 55% Recycling
- 2004: 60% Recycling
- 2005: 63% Recycling (currently on target)

Unfortunately, we do not have records for distribution of plastic carrier bags prior to 2004, and are not therefore able to provide precise data on volumes consumed by customers in Ireland prior to the introduction of the Plastic Bag Levy. As an alternative, however, by using available data for 2004 for Ireland and comparing with our UK business, we are able to see that our UK business distributes almost 10 times as many bags per unit turnover.

Company Division	Turnover in €	Carrier Bags distributed	Bags per € t/o
MSVC, Ireland	1,800,000	20,051,000	11.14
MBL, UK	700,000	76,972,000	109.96

Agenda Item 1

Environment and Rural Development Committee

2 November 2005
ERD/S2/05/27/1d

SUBMISSION FROM THE DEPARTMENT OF THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT

Plastic Bag Levy

Background

The 15 cent levy on disposable plastic shopping bags was introduced in Ireland on 14 March 2002. To date the levy has raised **€46m**. €13.5m was collected in 2004. Our original estimate was that €11m would be raised per annum.

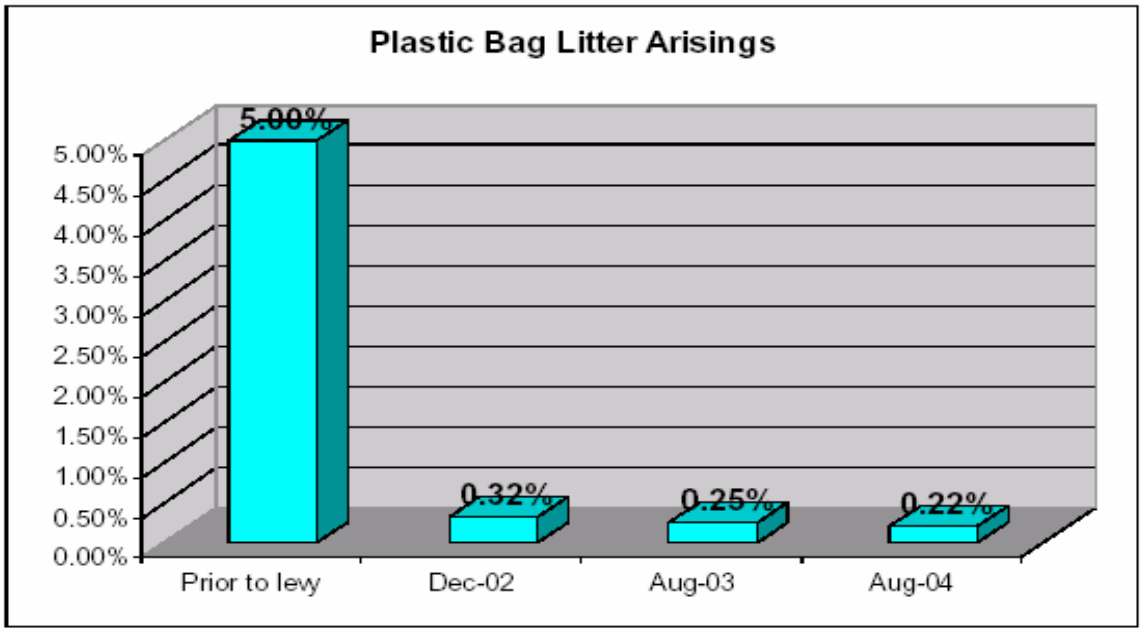
All plastic Bag Levy receipts together with Landfill Levy receipts are paid into a ring fenced "Environment Fund". In general, the Fund may be used to support waste management, recycling and other environmental projects including waste reduction programmes, operation of waste recovery activities, promotion of environmentally friendly products, waste prevention initiatives, to assist implementation of aspects of local authority waste management plans, litter prevention, initiatives in relation to the protection of the environment and/or sustainable development, partnership environmental projects, environmental education and awareness initiatives.

Effect

It is estimated that the use of disposable plastic shopping bags has been reduced by approx. 93% since its introduction. Prior to its introduction approx. 1.2 billion disposable plastic bags were given away free by retailers.

The primary purpose of the Plastic Bag Levy is that it is a litter control measure rather than a measure to discourage plastic waste going to landfill, such as the €15 a metric tonne Landfill Levy which is intended to act as a disincentive in placing waste, particularly recyclates and compostable material into landfill. It was for this reason that biodegradable disposable shopping bags were not exempted. The Department does not have statistics concerning sales of refuse bags and pedal bin-liners. However, it has been reported that sales of these items have increased following the introduction of the levy.

Whereas it has not reduced levels of plastic going to landfill (as many households previously used plastic shopping bags as pedal bin liners and now as an alternative purchase conventional bin liners) it has had a huge impact on visible litter. Plastic bags used to account for 5% of our litter arisings. Since the introduction of the levy they now account for only 0.22% of litter arisings.



Source: The National Litter Pollution Monitoring System

Retailers now sell cloth and heavy duty plastic shopping bags designed for re-use which are in widespread use. Plastic shopping bags designed for re-use are exempt from the levy provided that the retailer charges at least 70 cent for the bag. Small plastic bags for holding loose fruit and vegetables and meat are also exempt.

Public Attitudes

A recent national survey on the Environment "Attitudes and Actions 2003", found that 91% of those surveyed believe the Plastic Bag Levy is a good idea. Among the many reasons given are that it is better for the environment, there are no plastic bags visible in the streets (it was also a rural problem with bags snagged in fences, hedgerows and trees) and that re-usable bags are more convenient for holding shopping. This is a major change in attitude as during the course of the previous survey 1999, 40% of those surveyed stated they would not be willing to pay a levy. The 6% who did not believe that the levy was a good idea cited that they missed having plastic bags about the house and were also frustrated when they forgot to bring-usable bags into the shop. Although the survey report does not say so, it is reasonable to assume that the remaining 4% of respondents had no opinion either way in the matter.

The survey also indicates that 90% of shoppers use reusable/long life bags, 6% use cardboard boxes, 4 % plastic bags and 1% other means.

Collection

The Revenue Commissioners (the State tax collection agency) are the designated collection authority for the levy under the Waste Management ((Environmental Levy) (Plastic Bag) Regulations 2001. These Regulations

are made under the Waste Management (Amendment)Act, 2001 which also provides for the establishment of the Environment Fund.

The Regulations adapt various provisions of the Tax Acts for the purposes of the Revenue Commissioners' functions.

The operation of the levy is also subject to the normal Revenue Commissioners auditing arrangements. The levy is collected quarterly from retailers and is paid directly in to the Environment Fund for use in support of waste recycling, litter and other environmental initiatives.

Enforcement

Local Authorities central to the enforcement of the levy on the ground. They are responsible for ensuring compliance by retailers with the requirements of the levy regulations. Enforcement officers have extensive powers to enter any retail premises, to conduct any searches or investigations considered necessary, and to inspect or remove any records, books and documents for the purposes of any proceedings in relation to the levy.

SPICe briefing

12 September 2005

05/50

CROFTING

TOM EDWARDS

This briefing has been prepared in advance of the Members' Business debate on crofting on Wednesday 14 September 2005, and also provides background in anticipation of the introduction of a Crofting Reform (Scotland) Bill later this parliamentary year.

It provides a brief description of crofting law; outlines some of the main proposals the Scottish Executive has consulted on in its Draft Crofting Reform (Scotland) Bill; looks at some of the comment on the Draft Bill; and summarises the financial support which government provides to crofting

KEY POINTS OF THIS BRIEFING

- Crofts are agricultural holdings in the seven former counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland ('the crofting counties') which are subject to the Crofting Acts
- There are around 17,700 crofts in Scotland. This is roughly one third of all the agricultural holdings in Scotland
- There are an estimated 11,500 crofting households (some crofting families tenant and/or own more than one croft) with a total population of around 33,000
- In recognition of its importance in sustaining remote rural communities, crofting has been protected with a unique code of law. Crofting tenancies were introduced by the Crofters Holdings (Scotland) Act 1886. The principal statute is now the the Crofters (Scotland) Act of 1993 which consolidated legislation made between 1955 and 1993
- The basic principle of crofting law is to give the crofter and his family security of tenure at a reasonable rent. Crofting tenancies have no time limit, and are hereditary
- Crofters are only in danger of losing their tenancy if they fail to pay their rent, break certain other statutory conditions, or if the landlord 'resumes' part or all of the croft. Resumptions by the landlord are regulated by crofting law
- The Crofters Commission's role is to regulate and develop crofting. It was constitued in its modern form in 1955
- The Scottish Land Court can be asked to determine questions of fact or law arising under the Crofters (Scotland) Act 1993
- Reform of crofting law is the final piece of legislation envisaged in the programme of Land Reform recommended by the Scottish Executive's Land Reform Policy Group in 1999
- The Scottish Executive published a White Paper in 2002 setting out its broad plans for reforming crofting laws
- Following the White Paper consultation, a Draft Crofting Reform (Scotland) Bill was published in March 2005
- The main proposals included in the Draft Bill are: separating the executive and non-executive functions of the Crofters Commission; simplifying the regulation of crofting; changing the uses allowed for croft land and common grazings to encourage diversification; giving landowners a new power to create new crofts in the crofting counties (but not outside them); allowing land which has been taken out of crofting tenure to be returned to crofting tenure if it has not been used for the purpose for which it has taken out; and legislating for a "development scheme" approach which seeks to offer a more streamlined approach to developing wind farms on crofting land
- The proposals in the Draft Bill have resulted in calls for the Scottish Executive to publish a vision for crofting. There are concerns that the market in crofts is not being sufficiently regulated to protect the core principle of crofting tenure, and also that, by allowing housing and windfarm developments on croft land, Highland and Island issues will be solved at the expense of crofting
- As well as receiving subsidies like other farmers under the Common Agricultural Policy, there are some schemes which exclusively provide financial support to crofting. There is support for younger people entering crofting; grants to help crofters with the cost of building a house; grants to help crofters improve the productivity of their crofts; and measures to help improve the quality of their cattle. These last have recently been revised, and a Scottish Executive consultation on a new scheme concluded in August 2005

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INTRODUCTION

Crofts are agricultural holdings in the Highlands and Islands of Scotland which are subject to the Crofting Acts. A croft is not a house, though the croft may include a house. A crofter is usually the tenant of a croft, although around 20% of crofts are owned by the crofter.

There are around 17,700 crofts in Scotland (Crofters Commission 2004a). This is roughly one third of all the agricultural holdings in Scotland[1]. Around 3,500 of these crofts are owner occupied, the rest are tenanted (Crofters Commission 2000). The main concentrations of crofts are in the Western Isles (6,000), on Skye and some of the other islands of the Inner Hebrides (1,840), in Shetland (2,700) and on the North and West coast of the Scottish mainland (2,300).

There are an estimated 11,500 crofting households (some crofting families tenant and/or own more than one croft) with a total population of around 33,000. Research has shown that areas with the protection of crofting legislation retain a higher rural population than other rural areas which lack such protection (Crofters Commission 1998).

The crofting lifestyle of tending these holdings has a long history. Many crofts are small (the average croft is around 5 hectares), and cannot sustain the full time employment of a crofter. Jobs in fishing, tourism and other jobs in the rural industry and service sectors are important in providing an off-croft source of employment with which crofters can supplement their income.

Crofting land is generally poor quality and nowadays mainly constitutes permanent pasture, with additional areas of rough grazing. Most crofters work part-time on their holding and supplement their income from other jobs or business activities. Crofting agriculture is based primarily on rearing of store lambs and cattle for sale to lowground farmers for fattening or as breeding stock.

CROFTING LAW

In recognition of its importance in sustaining remote rural communities, crofting has been protected with a unique code of law.

HISTORY UP TO DEVOLUTION

Crofting tenancies for holdings in the seven former counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland ('the crofting counties') were introduced by the Crofters Holdings (Scotland) Act 1886 for holdings not exceeding 50 acres of inbye land or for which a rent not exceeding £50 was paid. This tenure was extended to the whole of Scotland by the Small Landholders (Scotland) Act 1911 (c 49) ('the 1911 Act') for holdings not exceeding 50 acres of inbye land or for which a rent not exceeding £50 was paid. There followed further amending Acts, notably in 1919 and 1931[2]. These statutes are collectively called 'The Landholders Acts'. In the Acts of 1911, 1919 and 1931, the term 'crofter' was replaced by the words 'landholder' and 'statutory small tenant' (Crofting and Smallholding 2005).

The Crofters (Scotland) Act 1955 restored to crofters in the seven crofting counties their own special code of law. All landholders and statutory small tenants in these counties were then re-

[1]The Scottish Executive's (2005a) 'Economic report on Scottish agriculture' records 50,322 main and minor agricultural holdings in Scotland (Table C1)

[2] Land Settlement (Scotland) Act 1919 (c 97) and the Landholders and Agricultural Holdings (Scotland) Act 1931 (c 44)

designated crofters. The Crofting Reform (Scotland) Act 1976 gave a crofter the option of acquiring his croft land. The Crofter Forestry (Scotland) Act 1991 allowed crofts and common grazings to be planted with trees. The Crofters (Scotland) Act of 1993 is the most recent major piece of crofting legislation which consolidated legislation made between 1955 and 1993. The Transfer of Crofting Estates (Scotland) Act 1997 allows Scottish Ministers to dispose of their crofting property to an approved body which is representative of the crofting interests in that property. Scottish Ministers are landlords of some crofting estates in the Highlands and Islands covering 105,000 hectares with nearly 1,400 crofters (Crofters Commission 2004b).

THE CROFTERS COMMISSION AND SCOTTISH LAND COURT

The Crofters Commission was constitued in its modern form in 1955. The Commission is currently headed by a Chairman and 7 Commissioners. The general functions of the Commission are:

- To regulate, reorganise and develop crofting
- To promote the interest of crofters
- To keep matters relating to crofting under review and advise Scottish Ministers on crofting matters

The Commission is assisted in carrying out its duties by a Panel of Assessors. The assessors draw localised crofting matters to the attention of the Commission and inform crofters about changes in Commission policy and initiatives

The Scottish Land Court can be asked to determine questions of fact or law arising under the Crofters (Scotland) Act 1993. The Court cannot be asked to determine any question (except a decrofting[3] decision) that has been decided by the Crofters Commission, unless it is a question of law. The Crofters Commission keeps a Register of Crofts. The entry of a holding in the register does not guarantee that the holding is a croft. Where the crofting status of a holding is disputed, the Land Court will rule on this. Other cases on which the court may typically be asked to rule include boundary disputes and fixing rents.

CURRENT CROFTING LAW

The basic principle of crofting law is to give the crofter and his family security of tenure at a reasonable rent. Crofting tenancies have no time limit, and are hereditary. Crofters are only in danger of losing their tenancy if they fail to pay their rent, break certain other statutory conditions[4], or if the landlord 'resumes' part or all of the croft. The landlord must apply to the Scottish Land Court to do this, and permission can only be granted if it is for the good of the croft, the estate as a whole, or is in the public interest (e.g. for building houses, harbours, piers, churches, schools and halls, planting trees, and for any other purpose likely to provide employment for crofters or others in the locality). The landlord must also compensate the crofter for their loss. The statutory conditions which a crofter must respect restrict the use of the croft land to farming, or growing trees. Crofters are also entitled to erect or use a building or other structure on the croft for an auxiliary occupation e.g. a loom shed for weaving. The rent is agreed between the landlord and the crofter, normally before the start of a tenancy. Either can apply to the Scottish Land Court to fix a fair rent for a croft.

Crofters can renounce their tenancy at Whitsunday (28 May) or Martinmas (28 November) after giving their landlord one year's notice. Crofters are entitled to compensation from the landlord

[3] decrofting is described on the following page
[4] Listed in Schedule 2 of the Crofters Scotland Act 1993

for improvements they have made to the croft e.g. for putting up a building. When a crofting tenancy comes to an end, the landlord of a croft which has no crofting tenant must notify the Crofters Commission and gain its approval before reletting. If a croft is vacant for more than 2 months without the landlord proposing the reletting, the Commission can re-let the croft itself.

A crofter has an absolute right to buy the site of their croft house. If the landlord refuses to sell or there is failure to agree terms and conditions of sale, the crofter can apply to the Land Court for an Order requiring the landlord to sell. Where it is left to the Court to fix the price, it will be fixed at such amount as the land might be expected to fetch if:

- it were non-croft land on which there were no buildings and on which it would not be permissible to put up or to carry out any other development
- it were sold in the open market by a willing seller with vacant possession

A crofter may require his landlord to sell him the whole of the inbye land of the croft or any part of it. If the landlord refuses to sell, or there is disagreement on terms and conditions, the crofter can apply to the Land Court for an Order authorising him to acquire the land. Where it is left to the Court to fix the price, it will be fixed at a sum equal to 15 times the amount of the current annual rent payable for the land to be acquired. The Land Court can refuse to grant the crofter's application for an Order authorising him to acquire croft land. It will refuse if satisfied:

- that the sale of the land would cause a substantial degree of hardship to the landlord, and/or
- that the sale would be substantially damaging to sound estate management

If a crofter exercises their right to buy their croft they become the landlord. A strict interpretation of the law would require that the croft then be relet. The Crofters Commission's (1999) policy statement on croft purchases says that the Commission will not normally intervene to seek re-letting proposals if the crofter or a member of their family continue to work the croft themselves.

Crofters who intend to buy their crofts can apply to the Crofters Commission to 'decroft' part or all of their croft, which brings the crofting tenure of the land to an end. The Commission must agree to this where the crofter has applied to decroft part of the croft in order to provide a house on the croft. In other cases, before allowing the decrofting, the Commission must have regard to the general interest of the crofting community and in particular to the demand for croft tenancies in the area. A landlord can also apply to decroft a vacant croft.

The Crofters Commission has powers to terminate the tenancies of absentee crofters[5] who do not normally live on the croft. The Register of Crofts shows 1,765 crofters as absentees. In 1997, the Commission launched a programme to tackle absenteeism. Since the launch of the absentee initiative in 1997, 1,044 cases have been resolved as follows:

- 462 crofts transferred to new entrants
- 252 transferred to other crofters
- 330 absentees have returned to live on or within 10 miles of their crofts

Crofters can assign their tenancy to another person during their lifetime. They can assign the croft to a family member so long as they have the landlord's consent. If crofters want to assign their tenancy to a family member without the landlord's consent, or to a non-family member, they must apply to the Crofters Commission.

[5] Under the Crofters (Scotland) Act 1993 an absentee crofter is not ordinarily resident within 10 miles of the croft, and the Crofters Commission believes it would be in the interests of the township if the croft were re-let.

Crofters can bequeath their tenancy to any one person. If that person is not a family member the bequest must be approved by the Crofters Commission. The meaning of family includes any relative, however distant. The law on succession to a croft tenancy where a crofter has died intestate is complex.

Crofters can sublet their crofts with the consent of the Crofters Commission. The rent for a sublet is agreed between the crofter and the subtenant. Crofters can also apply to the Crofters Commission to subdivide their crofts into two or more units, usually for the purpose of assigning one of them to another person.

Much of the land which is subject to crofting legislation is used by crofters communally, mainly for grazing livestock. There are around 800 regulated common grazings in the crofting counties. Common grazings are usually managed by a Grazing Committee, which makes Grazing Regulations to control their use. The crofters or others who hold interests in common grazings are known as shareholders. The number and kinds of livestock which each crofter is entitled to graze is known as the "souming". A shareholder in a common grazing is entitled to apply to the Commission for an apportionment of part of the common grazing for their exclusive use. Part 3 of the Land Reform (Scotland) Act 2003 has given crofting communities an absolute right to buy their common grazing land at any time. To date, no group has made use of the crofting community right to buy, although two are currently being considered (Pairc and Galson Estates on Lewis) (Scottish Executive 2005b).

Crofts and common grazings in a particular area are known as crofting townships. The Crofters Commission can prepare a reorganisation scheme with proposals for reallocating the crofting land in the township by e.g. redrawing croft boundaries, apportioning common grazings, and enlarging township land by adding non-crofting land in the neighbourhood and admitting new crofters. Reorganisation schemes must be approved by Scottish Ministers.

DRAFT CROFTING REFORM (SCOTLAND) BILL

Reform of crofting law is the final piece of legislation envisaged in the programme of Land Reform recommended by the Scottish Executive's Land Reform Policy Group (1999). The Scottish Executive (2002) published a White Paper setting out its broad plans for reforming crofting laws. The Ministerial foreword to the White Paper on crofting law reform offers a clear exposition of the Scottish Executive's (2002) crofting policy:

> *Crofting is held in place by a partnership between people and government. People make a commitment to live and work in remoter areas, to raise families and to follow a lifestyle which, if not as well-endowed with access to the facilities and opportunities which urban Scots can expect, is perhaps richer in its linkage to the land, nature and history.*
>
> *Government's side of this partnership is to continue to develop and pay for the legal framework that guarantees security for both the individual and the community. Our commitment is further demonstrated through the unstinting provision of grants over many years and, at this particular moment, through the deployment of Scottish Executive resources to make necessary and useful changes to that legislative framework.*
>
> *Our aim is to develop crofting legislation not so much as the historic means of defence, but more than ever as a means of active and positive development to ensure that crofting, crofters and crofting communities continue and prosper. Essentially, we recognise that crofting has the potential to rebuild population*

and, with modern technology and new opportunities, croft land offers increasing possibilities as part of the base upon which that rebuilding must depend.

Following the White Paper consultation, a Draft Crofting Reform (Scotland) Bill was published in March 2005 (Scottish Executive 2005c).

The main proposals included in the Draft Bill are:

- Separating the executive and non-executive functions of the Crofters Commission so that executive functions are exercised by Commission staff and Commissioners have a wholly non-executive role

- Simplifying the regulation of crofting by removing the need for crofters or landlords to have the permission of the Crofters Commission for assignation, re-letting, subdivision, succession, bequests, resumption, decrofting and subletting of crofts. Instead the crofter (or as the case may be, landlord) would be required to inform the Commission, and notify the community, and would be allowed to go ahead unless there are objections from local people, or the Commission

- Making the law on succession where a crofter dies intestate clearer

- Allowing crofters who are owner occupiers to let their crofts on a "short term croft tenancy" of up to 10 years

- Changing the uses allowed for croft land and common grazings (currently restricted to agriculture, forestry and peat-cutting) to allow wider use of crofts

- Giving landowners a new power to create new crofts in the crofting counties

- Allowing land which has been resumed or decrofted to be returned to crofting tenure if it has not been used for the purpose for which it has been resumed or decrofted

- Creating a new legal basis upon which the Crofters Commission can pay grants to crofters

The Draft Bill consultation also mentions some issues on which the Executive specifically sought further views.

The main issue is of renewable energy developments on croft land and common grazings, which has arisen since the White Paper was published. Renewable energy developers have identified some problems with the crofting legislation (such as the possibility that an agreement between crofters and a developer would not bind their successors) which the Draft Bill would seek to address. The Draft Bill suggests that obtaining all the separate consents and permissions might make taking forward a development on croft land less attractive than on non-croft land. The Draft Bill proposes a "development scheme" approach which seeks to offer a more streamlined approach to taking forward a proposal, which would be approved by the Scottish Land Court.

A response to the White Paper suggested a way of resolving boundary disputes between crofters. This is that, in the absence of documentary evidence to the contrary, a boundary which has been the accepted boundary for 20 years should be the legal croft boundary. The Executive has included this proposal in the Draft Bill. A second related proposal was that the croft status of

land which has been recorded on the Register of Crofts for 20 years and treated as croft land should be beyond legal challenge. This proposal has also been included in the Draft Bill.

The Executive asked for information about any ways in which landowners might seek to circumvent the Crofting Community Right to Buy. The Draft Bill cites one example of landowners leasing property rights prior to land being purchased by the crofting community. The Executive says that if it proves to be the case that this is happening it will legislate on this in the Crofting Reform Bill.

The Draft Bill also explains that the Executive does not intend to legislate for creating new crofts outside the crofting counties or devolving regulation of crofting to local bodies (i.e. at a level lower than the Crofters Commission): the latter idea did not attract support in the White Paper consultation.

.

On the creation of new crofts, the Executive argued that the Agricultural Holdings (Scotland) Act 2003 has given tenants of other agricultural holdings the same security of tenure as crofters, as well as giving them a right to buy (although it is not an absolute right to buy). Therefore, the Executive considers that it is now possible to create holdings in the rest of Scotland which in terms of tenants' rights can be identical to crofts without extending crofting legislation.

There also remain in Scotland some smallholders outside the crofting counties who have their tenancies under the Landholders Acts. In giving evidence to the Rural Development Committee during Stage 1 consideration of the Agricultural Holdings (Scotland) Bill, Sir Crispin Agnew argued that this should be looked at (Scottish Parliament Rural Development Committee 2002):

> *The crofters flew off in 1955 and left the small landholders in the rest of Scotland. A large number of the landholdings were secretary of state holdings, which were sold in the 1970s, but quite a number of small landholders remain. Many are on the isle of Arran and pockets of them are in Ayrshire, Wigtownshire, Aberdeenshire and Banffshire. Those people are being left behind. Crofters are obtaining rights to buy and to diversify. Although we have the Agricultural Holdings (Scotland) Bill, nobody seems to be thinking about the small number of small landholders.*
>
> *In the past 15 years, the Scottish Land Court has dealt with six cases under the 1911 act. The act comes up in my practice about once every two or three years, when someone says, "We have this agricultural holding," and I write back to say, "Sorry, it is actually a smallholding under the 1911 act." Somebody needs to think about the small number of people who still hold land under the 1911 act, which is similar to the 1886 act, but has not been amended or revised since the 1950s. I suggest that that group of people needs to be thought about as part of the examination of land reform. They are a small number of people in little pockets here and there.*

A recent Parliamentary question from Rob Gibson MSP sought to establish how many small landholders remain, but the Scottish Executive does not hold this information (Scottish Parliament 2005a).

The Sunday Herald (2005) recently reported that when the Crofting Bill is introduced to Parliament it will contain a provision that would extend crofting tenure to Arran.

COMMENT ON THE DRAFT BILL

The Scottish Crofting Foundation (2005a), in responding to the Draft Bill consultation, said that the Scottish Executive's vision for the future of crofting was unclear:

> *The commitment from Scottish Executive Ministers to reform crofting legislation and make it work for the sustainable development of crofting communities – a key aim of the Land Reform agenda to which this Bill owes it genesis – is welcomed. As it stands however, it is unlikely to achieve this or the other aims for reform of crofting legislation put forward in the Land Reform process.*
>
> *Indeed, the Bill doesn't appear to build on the vision laid out for Land Reform or reflect the internationally recognised value of crofting in rural Scotland, and therefore begs the question "what is the Scottish Executive's vision for crofting?"*
>
> *There is a perception in the crofting community that there is a move to get rid of the crofting system through decreasing regulation for the system and allowing market forces to become increasingly dominant, particularly in relation to the transfer of crofts and development of housing on croft land. This perception is not dispelled by this Bill, which in failing to address some of the difficult but critical issues in crofting, is likely, perhaps as much by omission as action, to foster the gradual loss of this unique system.*
>
> *Whilst the efforts of Scottish Executive staff in amending this complicated legislation are to be applauded, it is apparent that they had to do this on an infirm strategic foundation. This inconsistency of vision unfortunately manifests itself in reactionary, contradictory paradigms that would lead, at best, to confusion and, at worst, to the rapid demise of crofting as a protected form of land tenure.*
>
> *It has been some time in the making and the past few years since the start of the crofting reform process have seen a number of developments that impinge on crofting, such as the escalation of the housing crisis, the rapid progression of wind energy and the reform of the Common Agriculture Policy. It would not be unreasonable, therefore, to undertake a strategic review at this point to re-visit the vision and evaluate the legislation*

There is a market in crofting tenancies. For example, crofters can assign their tenancy to another person, who will then pay them compensation for the improvements they have made to their croft. The market decides how much the assignation is worth. This has led to croft tenancies changing hands at high value, which the Scottish Crofting Foundation (2005b) believe frequently puts them beyond the means of local people and those who actually want to use the land for crofting. Whilst accepting that it would be very difficult to limit the price at which transfer of a croft tenancy takes place, the SCF advocate that tighter regulation of the use of croft land (both tenanted and owner-occupied) would help dampen the market in crofts, and put off speculators. The value of the assignation is generally less if there is no house on the holding, but the value of the assignation can be increased if the croft is a bare-land croft without a house. Since there is an expectation that crofters should be able to live on and work their crofts, they are likely to be able to obtain planning permission for a house – in other words the assignation can be used to effectively sell a house site. Alternatively, the crofter could apply to decroft part of their croft for a house site. They could also exercise their right to buy their croft, and sell it on the open market. So long as the new owner lived on the croft, they would not be an absentee, and the Crofters Commission would be unlikely to require the croft tenancy to be re-let. The feeling is that this is eroding the core principle of crofting law - the security for crofting tenants which it provides. This has become a particular concern because of the perception that the

Crofters Commission is either not using the powers which it does have, or has insufficient powers to prevent speculation in croft land. This view was put forward by Brian Wilson, writing in the West Highland Free Press (2005a):

> *Crofting tenure depends on the agricultural and community interest having primacy over money. That is the basic principle which underpins the system and always has done. All the safeguards which exist in theory around assignations and other variations of tenancies are supposed to safeguard that principle. Without them, croft land becomes like any other land – at the mercy of a spiralling property market.*
>
> *There is nothing new in any of this. The owner-occupancy debates of the 1960s and '70s were precisely about that principle. When they were offered the chance to become owner-occupiers in the 1976 Act, the vast majority of crofters declined it because of the manifest benefits of tenure. Since then, however, a process of erosion has been going on — driven by those whose financial advantage lay in "normalising" the market in crofting land. […]*
>
> *What nobody suggested in the 1960s and '70s was that owner-occupation could effectively be bypassed through the legitimisation of such a market in tenancies. Yet, increasingly, that is what the Crofters Commission has been turning a blind eye to; going through the rituals of assignation procedures but almost never intervening to protect either community or crofting interest. "We do not have the powers," they protested unconvincingly. "What we need is a new Crofting Act to give us them." […]*
>
> *I am reminded of the late Donald J MacCuish's legalistic rationalisation of croft owner-occupation. What the proud owner was buying, he would remind us, was not the croft — which was unsaleable — but landlord's rights over the croft. Therefore it would be within the powers of the Crofters Commission to require re-letting proposals from the landlord (i.e. the owner-occupier) if the tenant (i.e. the same person) was not properly utilising the croft.*
>
> *In legal theory, it was a perfect safeguard. In the real world, it was total fantasy - and I would take bets that the "power" has never once been used. All history suggests that the new interventionist powers of the commission would be in the same category — a fig-leaf of protection for a system which would be totally ruled by money, to the widespread exclusion of the local population. That is the true logic of this Draft Bill.*

In a recent Parliamentary question from Jamie Stone MSP, the Scottish Executive was asked how the proposals in the Draft Bill would affect the market in croft tenancies. The answer was as follows (Scottish Parliament 2005b):

> *The draft bill provides that every assignation of a croft will be subject to the consent of the Crofters Commission. If the proposed assignation is to any member of the crofter's family, the commission must consent unless the assignation would adversely affect the interests of either the estate or the public at large or the interests, or sustainable development, of the local crofting community. I do not envisage that there will be many instances where the commission's intervention will be necessary in family assignations.*
>
> *The same criteria will also apply where the proposed assignation is to someone who is not a member of the crofter's family but, in that case, the commission may also decline to consent in a number of circumstances which relate to the*

suitability, ability or personal circumstances of the proposed assignee or if there are reasonable grounds for concern over the assignee's proposals for the croft.

The price, or other consideration, for the assignation agreed between the crofter and proposed assignee will be of no consequence to the commission as consenters. That will be so whether the parties are related or not.

If a crofter seeks to assign his croft to someone other than a member of his family, it may well be that he will have publicly advertised its availability, subject to the consent of the commission to its eventual assignation. There is nothing new or objectionable about a crofter seeking a successor to the croft in this way rather than renouncing his tenancy to the landlord (which he may still do if a suitable successor cannot be found).

In a recent case, a decision of the Crofters Commission to refuse an application for decrofting of part of a croft on Shetland was appealed to the Scottish Land Court. The judgement of the Court was reported in the West Highland Free Press (2005b):

The court concluded: "In short we are not satisfied that the Crofters Commission dealt properly with the matters relevant to its statutory jurisdisction. There was concern that the applicants had acquired the land for speculation, rather than to work it. This is a matter which the Commission was entitled to consider but it is not clear what bearing they thought it had on the question of decrofting. There is nothing inherently wrong with buying land on a speculative basis. Owners of land are entitled to make the most use they can of their property, subject of course to proper statutory controls. It is not appropriate to use a control designed to protect crofting interests for the purpose of acting as a second planning authority, responding to individual expressions of concern about public amenity.

The same article also reported the reaction of Alistair MacIver, honorary president of the Scottish Crofting Foundation, to the Court's decision:

It used to be that the Land Court protected the crofting interest but the whole emphasis is changing to allow people to speculate with crofting land. The timing is interesting because the Commission considered these cases before the Taynuilt decision. We have always said that the Crofters Commission isn't using the powers it already has to protect the crofting system. The new Crofting Bill needs powers to stop speculation in croft land and to ensure the Commission carries out its duties. […] If there is an argument that corfters should be allowed to make some money out of providing house sites, this could be limited by law to one extra site per croft. There is a need for housing, but why can't this be done on the less useful land on the common grazing by agreement with each township. Indeed that might help take some heat out of the housing market.

The use of croft land for housing is a concern. The argument is that crofting agriculture relies on the inbye croft land e.g. to provide better quality grazing, or grow grass for hay or silage for winter fodder, and that if it is increasingly built on, this will compromise the sustainability of crofting agriculture as a whole. Instead, other land should be used for housing developments. John Laing, a councillor on Skye and a director of the Scottish Crofting Foundation was less concerned about building houses on croft land (West Highland Free Press 2005c):

My own view is that no matter how many house sites are made available there will always be more land for crofting – there are thousands of hectares out there – and in places like Skye there is a need for house sites. So I don't have a

difficulty with that and I don't see why a crofter, who has worked the land through his life, shouldn't sell a couple of sites and secure his pension, although I do appreciate there are different views on this. Some people are concerned that this is the end of crofting but it is in the nature of this system that it is evolving.

In another recent case, the Crofters Commission approved the decrofting of some land near Taynuilt (Crofters Commission 2005). A Parliamentary question was asked about the decision (Scottish Parliament 2005c):

> ***S2W-18040 - John Farquhar Munro (Ross, Skye and Inverness West) (LD) (Date Lodged 22 July 2005) :*** *To ask the Scottish Executive whether it believes that the decrofting of land at Taynuilt in Argyll for the construction of 10 luxury houses was in the interests of crofting.*
>
> ***Answered by Rhona Brankin (19 August 2005):*** *It is good for crofting for the Crofters Commission to regulate effectively and within the limits of its powers.*
>
> *The provision of housing is identified in crofting legislation as a reasonable purpose for which land may be decrofted. In the Taynuilt case, the elected local authority had determined that it was in the public interest, and indicated in the local plan, that the land in question should be used to meet housing demand in the Taynuilt area. Outline planning permission had been granted.*
>
> *It is for the Crofters Commission to consider the interests of any crofting community. It is not for the commission to act as a secondary planning authority.*

The Draft Bill also contains proposals which have been designed to facilitate windfarm developments on crofts and common grazings. There is a fear that these provisions might work antagonistically with the crofting community right to buy – the prospect of a wind farm development would raise the valuation of a common grazing, and so put its price beyond the reach of the crofting community.

Steve McCombe, a crofter from Harris, has written that not protecting croft land from housing developments and allowing wind farms to be built on croft land was attempting to solve Highland and Island wide issues at the expense of crofting (West Highland Free Press 2005d).

GOVERNMENT SUPPORT FOR CROFTING

Crofters receive subsidies under the Common Agricultural Policy just like other farmers. Crofters can also apply for grants for planting trees on their land from the Scottish Forest Grant Scheme.

There are also some schemes administered by the Scottish Executive and the Crofters Commission which are specifically targeted at crofters. Some of these have recently been reorganised.

The Crofting Counties Agricultural Grants Scheme provides support to help agricultural production on crofts e.g. by helping with the cost of a building for inwintering animals or storing animal feed. The Scottish Executive (2005d) issued a consultation paper on revising the scheme in February 2005.

The Croft Entrant Scheme offers support to encourage younger people to start up in crofting.

The Croft House Grant Scheme offers grants to crofters to help with the cost of building a house on their croft (Scottish Executive 2004). It replaced the previous Crofters Building Grants and Loan Scheme in August 2004, which offered a mix of grants and loans.

The Livestock Improvement Scheme used to offer help to crofters to improve the quality of their animals. It contained two parts: the Ram Purchase Scheme which subsidised the sale of rams to crofters; and the Bull Supply Scheme which allowed crofters to hire bulls from a Crofters Commission stud. The Scottish Executive brought the scheme to an end in 2004 because it was concerned that the scheme might not comply with EU State Aid rules (Scottish Parliament 2004a). The ending of the scheme was debated in the Scottish Parliament (2004b) on the 19 May 2004. A consultation on a Crofters Cattle Quality Improvement Scheme, which would become a successor to the bull supply part of the Livestock Improvement Scheme closed in August 2005 (Scottish Executive 2005).

Finally, the Crofters Commission (2003) has consulted on plans for a Croft Development Programme. The programme would support a broad range of activity including not only existing and new agricultural uses, and marketing and processing of produce but also environmental, public access, non-agricultural and community uses of croft land. The creation of a legal basis for such a scheme is envisaged in the Draft Crofting Reform (Scotland) Bill.

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SSI DESIGNATION FORM

SSI Title & No:	The Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005, **(SSI 2005/460)**								
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development								
Standing Order	**Affirmative**	10.6.1(a)		**Negative**	10.4				✓
		10.6.1(b)			10.5				
		10.6.1(c)		**Other**	NL		NP		
Lead Committee	Environment and Rural Development			**Other Committee**					
Purpose of Instrument	This Order discontinues the prior use exemption in section 9(5) of the Plant Varieties Act 1997 in relation to varieties of the species and groups listed in SI 1998/1025.								

Laid Date	26th September 2005	**40 day date**	20th November 2005
1st SLC Meeting	6th October 2005	**20 day date**	1st November 2005
Lead Committee Report Due	14th November 2005	**Other Committee Report Due**	

SE Contact	Carol Scott, ext. 46341
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	**Breaks 10(1) rule**		**Breaks 10(2) rule**		**PO Letter dated**		**PO Letter received**		
Revocations	**Revokes**			**Partially Revokes**					
Executive Note	✓	**Regulatory Impact Assessment**		**European Regulations/ Directives**					
Additional Information									

SSI DESIGNATION FORM

SSI Title & No:	The TSE (Scotland) Amendment (No.2) Regulations 2005, **(SSI 2005/469)**							
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development							
Standing Order	**Affirmative**	10.6.1(a)		**Negative**	10.4			✓
		10.6.1(b)			10.5			
		10.6.1(c)		**Other**	NL		NP	
Lead Committee	Environment and Rural Development			**Other Committee**				
Purpose of Instrument	These Regulations give effect to the implementation of BSE testing controls at abattoirs to control the return of beef from cattle aged over thirty months to the human food chain. The Regulations also make amendments required to clarify and update issues in the principal Regulations (SSI 2002/255) in relation to enforcement, identification and feed controls.							

Laid Date	29th September 2005	**40 day date**	23rd November 2005
1st SLC Meeting	6th October 2005	**20 day date**	4th November 2005
Lead Committee Report Due	14th November 2005	**Other Committee Report Due**	

SE Contact	Martin Morgan, ext. 46412
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance		**Breaks 10(1) rule**		**Breaks 10(2) rule**		**PO Letter dated**		**PO Letter received**			
Revocations	**Revokes**				**Partially Revokes**						
Executive Note	✓	**Regulatory Impact Assessment**	✓	**European Regulations/ Directives**	EC/932/2005 95/53/EC						
Additional Information											

Extract from the Official Report of the Subordinate Legislation Committee meeting held on 25 October 2005

TSE (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/469)

10:46

The Convener: We asked the Executive three questions on the regulations. The first point related to new regulation 10A(3)(c), which imposes an obligation on ministers to give written, reasoned notification of a determination under the provision. The committee asked to whom such notice is to be given, and the answer is that it is the occupier of the slaughterhouse.

Mr Maxwell: I have one or two questions about the response. First, it would seem odd to inform the occupier of a slaughterhouse but not to inform the official veterinary surgeon who made the point in the first place. Secondly, in a multiple occupancy slaughterhouse, would all occupiers be informed or just the one with whom the problem lay? When the Executive says occupier, does it mean occupier in the sense of the person who rents the space in the slaughterhouse, does it mean the owner or does it mean both? Although we have been given a direct answer it does not clarify the position particularly well. I am not sure whether there is time to go back to the Executive on that—

The Convener: No.

Mr Maxwell: We should report these questions to the lead committee. We have got an answer, but it has not really cleared things up.

The Convener: I agree with Stewart Maxwell. Are there any other points?

Murray Tosh: I agree that if we do not have time to raise the matter with the Executive we should take the course of action recommended by Stewart Maxwell. However, we should also flag up to the Executive our concerns about the lack of a clear meaning in all this.

The Convener: The clerk recommends that we send the section of the *Official Report* relating to the issue to the lead committee to give it the fullest details possible.

Members *indicated agreement*.

The Convener: On the second point, the committee asked the Executive to explain why the definition of "relevant bovine animal" in new regulation 10A(9)(b) includes an exception by reference to an instrument that will be revoked by the time this instrument comes into force. Members will see from

the Executive's response that it accepts that that was an error on its part, which it intends to correct.

Col 1244

On the third point, the committee asked for clarification of the phrase "the correct test", which is used in paragraph 12 of new schedule 1A. As members will see, the Executive is interpreting the correct test as meaning that a test can be linked to the exact carcase that it was performed on.

Mr Maxwell: I accept that, but I am still not happy with the explanation. The words are slightly erroneous. I do not understand what "the correct test" means. It goes without saying that the test should be linked to the animal. It is a slightly odd phrase to use, and the Executive's answer does not clarify it a great deal. "The correct test" suggests an incorrect test, and it sounds odd.

The Convener: It could be suggested that the Executive has not chosen the right term. However, given that time does not allow us to go back to the Executive, we should pass that comment to the lead committee, saying that even though we have been given an explanation, we have concerns about the use of that term. Is that agreed?

Members *indicated agreement*.

SSI DESIGNATION FORM

SSI Title & No:	The Reporting of Prices of Milk Products (Scotland) Regulations 2005, **(SSI 2005/484)**							
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development							
Standing Order	**Affirmative**	10.6.1(a)		**Negative**	10.4		✓	
		10.6.1(b)			10.5			
		10.6.1(c)		**Other**	NL		NP	
Lead Committee	Environment and Rural Development			**Other Committee**				
Purpose of Instrument	These Regulations provide for the enforcement and execution of EC Regulation 230/2005 which requires Members States to provide the Commission with ex-factory prices for milk and milk products where national production represents 2% or more of Community production.							

Laid Date	4th October 2005	**40 day date**	28th November 2005
1st SLC Meeting	25th October 2005	**20 day date**	9th November 2005
Lead Committee Report Due	21st November 2005	**Other Committee Report Due**	

SE Contact	Marie Coventry, ext. 46953
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	**Breaks 10(1) rule**		**Breaks 10(2) rule**		**PO Letter dated**		**PO Letter received**		
Revocations	**Revokes**			**Partially Revokes**					
Executive Note	✓	**Regulatory Impact Assessment**	✓	**European Regulations/ Directives**	EC 562/2005				
Additional Information									

Subordinate Legislation Committee

Extract from the 36th Report, 2005 (Session 2)

The Committee reports to the Parliament as follows—

The TSE (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/469)

1. The Committee raised three points with the Executive in relation to this instrument. Firstly, the Committee sought clarification of the scope of the obligation on Scottish Ministers in new regulation 10A(3)(c), inserted into the 2002 Regulations by regulation 4, and in particular to whom the notice mentioned in that provision ought to be given. It did not seem clear to the Committee whether the notification was to be given to the occupier of the slaughterhouse, the Official Veterinary Surgeon (OVS) who made the initial decision to suspend or revoke the agreement or the person appointed by Scottish Ministers to consider and report to them on representations made by an occupier.

2. The Executive indicated in correspondence to the Committee that notification of the decision will be given to the occupier of the slaughterhouse. While this provides some clarification of the position, the Committee is concerned that it remains unclear as to whom the notification would be given in the case of a multiple occupancy slaughterhouse or whether the occupier is considered to be the owner or the person who rents space in the slaughterhouse. **The Committee therefore draws these Regulations to the attention of the lead Committee and Parliament on the grounds that their meaning could be clearer**. The Committee also annexes an OR extract of its discussion of this point for the lead Committee's information.

3. The Committee asked the Executive for clarification of why the definition of "relevant bovine animal" in new regulation 10A(9)(b) includes an exception by reference to SI 1996/2097, which will be revoked by the time this instrument is in force. The Executive has acknowledged that inclusion of the exception was not necessary and has undertaken to rectify this at the next opportunity. **The Committee notes the Executive's response to bring forward an amendment to correct this error and draws the attention of the lead Committee and Parliament to the instrument on the grounds of defective drafting of this provision**.

4. The final point raised by the Committee was to seek clarification of the meaning of paragraph 12 of new schedule 1A, in particular what is meant by the use of the term "the correct test". The Executive has explained that this term relates to the system that will be required to be in place to ensure that the result of each laboratory test can be allocated to the carcase from which the sample was

taken. “The correct test” refers to receipt of results that meet the requirements of this system.

5. The Committee considered that it would be assumed that the test should be linked to the animals concerned and therefore considered that the use of the terms “correct test” was confusing. **The Committee therefore draws the attention of the lead Committee and Parliament to the instrument on the grounds that its meaning could be clearer**.

APPENDIX 1

The TSE (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/469)

On 6 October 2005 the Subordinate Legislation Committee, having considered the above instrument, sought an explanation of the following matters:-

1. The Committee asked the Executive to explain the obligation on Scottish Ministers in new regulation 10A(3)(c), and in particular to whom the notice mentioned in the provision ought to be given.

2. The Committee asked the Executive to clarify why the definition of "relevant bovine animal" in new regulation 10A(9)(b) includes an exception by reference to SI 1996/2097, which will be revoked by the time this instrument is in force.

3. The Committee asked the Executive to clarify the meaning of paragraph 12 of new Schedule 1A, and in particular what is meant by the use of the term "the correct test" in that provision.

The Scottish Executive responds as follows:-

The Executive notes the observations of the Committee and is pleased to provide clarification as follows:-

1. The purpose of regulation 10A(3) includes providing the occupier of a slaughterhouse with the opportunity to seek review of a decision of an Official Veterinary Surgeon to suspend or revoke a relevant agreement. The person appointed by the Scottish Ministers will consider the representations of the occupier and submit a written report to them. The Scottish Ministers will consider the representations and the written report and, having decided whether to uphold or overturn the original decision, will intimate their decision direct to the occupier of the slaughterhouse.

2. It had originally been hoped that the instrument would be brought into force before 7 November in order to enforce its animal feeding stuffs provisions. Had that occurred, the prohibition on slaughter of cattle over 30 months of age anywhere other than in slaughterhouses with relevant agreements in place would have covered all cattle, including Beef Assurance Cattle. At present such cattle can be slaughtered for human consumption so the exception was necessary to allow that to continue until 7 November. Unfortunately, when it was decided that the instrument would not come into force until 7 November, the fact that this meant the exception was not necessary was overlooked. The Executive is grateful to the Committee for bringing this matter to its attention but does not consider that it will affect the validity of the instrument. This point will be dealt with by amendment at the next opportunity.

3. Each slaughterhouse must have a system for ensuring that the result of each laboratory test can be allocated to the carcase from which the sample for analysis was taken. Receipt of the "correct test results" in paragraph 12

of Schedule 1A refers to the receipt of results meeting the requirements of that system.