



Environment and Rural Development Committee

12th Meeting, 2006

Wednesday 19 April 2006

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

1. **Crofting Reform etc. Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Mike Watson, Crofting Reform etc. Bill Manager, Scottish Executive;
Shane Rankin, Crofting Reform etc. Bill Leader, Scottish Executive;
Aileen Imrie and Ethel Burt, Solicitors, Legal and Parliamentary Services,
Scottish Executive;

Panel 2

Derek Flyn, crofting lawyer, Consultant with Macleod & MacCallum, Solicitors,
Inverness;
Brian Wilson;
Professor Jim Hunter;

Panel 3

Hughie Donaldson, Director, Scottish Crofting Foundation;
Andy Robertson, Chief Executive, NFU Scotland; and
Ian Cairns, Area Consultant for Lewis and Harris, Scottish Agricultural
College.

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

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006, (SSI 2006/151); and

the Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006, (SSI 2006/156).

3. **Work programme:** The Committee will consider its future work programme.

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Clerk to the Committee
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The following papers are attached:

<u>Agenda Item 1</u>	
Briefing by SPICe	ERD/S2/06/12/1a
Briefing Paper <i>[Members only]</i>	ERD/S2/06/12/1b
Submission from the Scottish Executive	ERD/S2/06/12/1c
Submission from Derek Flyn	ERD/S2/06/12/1d
Submission from Brian Wilson	ERD/S2/06/12/1e
Submission from Professor Jim Hunter	ERD/S2/06/12/1f
Submission from Scottish Crofting Foundation	ERD/S2/06/12/1g
Submission from NFU Scotland	ERD/S2/06/12/1h
<u>Agenda Item 2</u>	
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2006, (SSI 2006/151)	ERD/S2/06/12/2a
Extract from the Subordinate Legislation Committee's 15th Report, 2006	ERD/S2/06/12/2b
The Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006, (SSI 2006/156)	ERD/S2/06/12/2c
<u>Agenda Item 3</u>	
Paper from the Convener <i>[Members only]</i>	ERD/S2/06/12/3a

SPICe briefing

12 April 2006

06/26

CROFTING REFORM ETC. BILL

TOM EDWARDS

This briefing has been prepared in advance of the Parliament's consideration of the Crofting Reform etc. Bill, which was introduced to the Parliament on the 2 March 2006.

The briefing has two main sections. The first gives a brief description of the current law on crofting, which has evolved since the late nineteenth century. The second describes the proposals in the Bill, together with selected comments from interested individuals and organisations.

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KEY POINTS OF THIS BRIEFING

- Crofts are agricultural holdings in the seven crofting counties of Shetland, Orkney, Caithness, Sutherland, Ross and Cromarty, Inverness-shire and Argyll
- In 2005 there were 17,785 crofts, and 782 common grazings
- Crofting tenure has been protected by its own code of law since 1886
- Crofting is regulated by the Crofters Commission, based in Inverness

The main changes which would be made by the Bill are:

- the constitution of the Crofters Commission would be changed to make it more reflective of modern Non-Departmental Public Bodies (NDPBs)
- new crofts could be created within the crofting counties, and in other parts of Scotland in areas designated in an order made by Ministers. Small landholders in these areas would be able to turn their holdings into crofts
- crofters would be able to use their crofts for “purposeful uses” other than grazing/forestry. They would have to cultivate their crofts, and could lose their tenancy if they misused or neglected them
- the role of the Crofters Commission in regulating crofting would be changed. It would only decide on assignments, divisions, and sublets of crofts where there is an objection to the proposal or where certain conditions applied
- landowners would be able to resume land from crofting tenure temporarily, instead of permanently as at present. Resumed land which had not been used would revert to crofting tenure
- landowners or developers would be able to apply to the Land Court for a development scheme, e.g. for a wind farm development. The Land Court would decide if crofters would be fairly compensated before approving a scheme
- crofters would be able to use common grazing land for wider purposes. New common grazing could also be created
- to prevent landowners seeking to frustrate the crofting community right to buy, the Land Reform (Scotland) Act 2003 (asp 2) would be amended to allow crofting communities to buy any leases which existed over crofting land, as well as the land itself
- the Bill (section 38) would make minor amendments to the Scottish Land Court Act 1993 (c 45)

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.

The table below shows the numbers of crofts and common grazings in each of the seven crofting counties.

Table 1 – Crofts and common grazings in the crofting counties 2005

	Total crofts	Owner occupied crofts	% Owner Occupied	Common grazings
Shetland	2,705	791	29	101
Orkney	460	368	80	3
Caithness	996	518	52	19
Sutherland	2,030	425	21	97
Ross and Cromarty	5,412	476	9	208
Inverness-shire	5,103	738	14	285
Argyll	1,079	393	36	69
Total	17,785	3,709	21	782
<i>Of which Western Isles¹</i>	6,027	69	1	229

Source: Crofters Commission (2006)

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 of 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.

¹ The Western Isles is not one of the seven crofting counties. Lewis is included within the former county of Ross and Cromarty, and the other Western Isles are within the former county of Inverness-shire

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 (c 29) 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 1931². 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 (c 21) 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-designated crofters. The Crofting Reform (Scotland) Act 1976 (c21) gave a crofter the option of acquiring his croft land. The Crofter Forestry (Scotland) Act 1991 (c18) allowed crofts and common grazings to be planted with trees. The Crofters (Scotland) Act 1993 (c 44) 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 (c 26) 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 2004).

THE CROFTERS COMMISSION AND SCOTTISH LAND COURT

The Crofters Commission was constituted 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 (c 44). The Court cannot be asked to determine any question (except a decrofting 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

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

danger of losing their tenancy if they fail to pay their rent, break certain other statutory conditions³, 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 the crofter or the landlord 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 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 his/her 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 re-let. 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 continues 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.

³ Listed in Schedule 2 of the Crofters Scotland Act 1993

The Crofters Commission has powers to terminate the tenancies of absentee crofters⁴ 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 initiative, 1,315 cases have been resolved as follows:

- 602 crofts transferred to new entrants
- 300 transferred to other crofters
- 413 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.

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 (asp 2) has given crofting communities an absolute right to buy all their croft land including common grazing at any time. To date, no group has made use of the crofting community right to buy, although two applications are currently being considered (Pairc and Galson Estates on Lewis) (Scottish Executive 2005a).

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, for example, 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.

DEVELOPMENT OF THE BILL

In January 1999 the Land Reform Policy Group published its recommendations for land reform in Scotland, including [proposals](#) for amending crofting legislation (Scottish Executive 1999).

In July 2002 the Scottish Executive published a White Paper entitled "Crofting Reform: Proposals for Legislation" with proposals for addressing the main objectives identified by the Land Reform Policy Group.

⁴ 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.

In March 2005 the [Draft Crofting Reform \(Scotland\) Bill](#) was published (Scottish Executive 2005b). An [analysis of responses](#) to the consultation has also been published (Scottish Executive 2005c).

THE BILL

CROFTERS COMMISSION

The Crofters Commission is a Non-Departmental Public Body. The Bill would make some changes to the Crofters Commission to make its organisation more reflective of modern NDPBs. Section 1 of the Bill would introduce new sections to the 1993 Act which set out the general duties and powers of the Commission. It would also replace Schedule 1 of the 1993 Act with a new version contained in Schedule 1 of the Bill which makes more detailed provisions for the organisation of the Commission.

The Comhairle nan Eilean Siar suggested that Commissioners should be elected rather than appointed, or at least that there should be a requirement for local authority representation on the Commission, as for health boards. The Scottish Crofting Foundation (2005) also suggested Commissioners should be elected from among crofters, and that the Commission should appoint its own chairperson, rather than being appointed by Ministers.

The Commission currently has 62 staff, who are civil servants. The Bill would provide for the Commission to employ its own staff, who would not be civil servants (Schedule 1 paragraph 2). Existing staff would be offered employment with the Commission but would be able to elect to remain civil servants in which case the Scottish Executive would endeavour to find alternative employment for them within the Executive or in the civil service.

The Public and Commercial Services Union and Prospect both commented on the change in status of Commission staff. They suggested that there would be a reduction in opportunities for promotion if staff were to cease to be civil servants; they were concerned that a reduction in regulation by the Commission might lead to redundancies, and any members affected would not be able to transfer back into the civil service; and they were concerned that the Commission might move from its Inverness headquarters – staff who were unable to move would not be able to seek another civil service job (Scottish Executive 2005 d & e).

Section 2 of the Bill would insert a new section 2A into the 1993 Act which would allow the Commission to adopt a local policy for one or more crofting townships. Local policies would allow different approaches to the regulation of crofting in different areas. This would allow the Commission to exercise the discretion available to it in different ways in different locations. For example in one area there might be a strong presumption against granting apportionments or permitting division of crofts.

NEW CROFTS AND SMALL LANDHOLDERS

At the moment there is no statutory provision which would allow the creation of new crofts. Section 10 of the Bill would introduce a new section 3A into the 1993 Act which would allow landowners to apply for new crofts to be created. There was widespread support for this proposal in the draft Bill consultation.

A major disincentive to creating new crofts is the crofter's absolute right to buy. For example, the Isle of Gigha Trust has expressed an interest in creating new crofts but would not do so if

the right to buy applied (Scottish Executive 2005f). The Bill would allow the landowner and crofter to agree that this right to buy would not apply, and this agreement would be binding on the crofter's successors. It is not clear whether such agreements would extend to a crofter's right to buy a house site. This is normally needed for the crofter to obtain a mortgage.

The draft Bill would have restricted the creation of new crofts to the crofting counties. A number of responses to the draft Bill consultation, particularly from the Island of Arran, called for the creation of new crofts outside the crofting counties. The Bill would allow Ministers to make an order designating land outside the crofting counties in which new crofts could be created, again following an application by the landowner. Orders would have to be approved by Parliament under the affirmative procedure.

When holdings in the crofting counties were given a separate legal status from other smallholdings by the 1955 Act a number of small landholders outside the crofting counties remained. The exact number of small landholders in Scotland today is not known, but a small number are known to remain in the isle of Arran, Ayrshire, Wigtownshire, Aberdeenshire and Banffshire. Independently of the provisions on new crofts the Bill would allow a small landholder in areas in which crofting tenure was extended to apply to the Crofters Commission to have their landholding registered as a croft (subsection 2 of new section 3A). The Land Court must be satisfied that the lease is one to which the Small Landholders Acts apply. The small landholder and the landowner must agree on an amount of compensation for the land becoming a croft. If they cannot agree the Bill would provide for compensation to be determined by the Scottish Land Court.

The National Farmers Union of Scotland (NFUS 2005) said that crofting should not be extended outside the crofting counties without further consultation so that all the implications could be considered and debated. The Scottish Rural Property and Business Association (2006) was [concerned](#) about the extension of crofting tenure:

In our view, small landholders already have protection and a pre-emptive right to buy under existing legislation, and this could easily be clarified in the Crofting Bill if deemed necessary. We believe that the extension of crofting status is unhelpful and will agitate the whole tenanted sector, resulting in pockets across rural Scotland of those with an absolute right to buy under crofting legislation neighbouring those with a pre-emptive right. Also, as the Bill stands, designation of these new crofting areas may be piecemeal and can be made by Ministers without any consultation.

Woodland crofts

The Forestry Commission established a group to look at the potential for creating woodland crofts which reported in January 2006 (Forestry Commission 2006). The report suggests that woodland crofts would be created by a community body buying Forestry Commission land, which would then establish woodland crofts and act as the crofting landlord. The report highlights the importance of the possibility provided by the Bill to waive the right to buy in ensuring that the land remains in community ownership. However, it also identifies a potential problem with this which would also apply to other new crofts - crofters normally need to exercise their right to buy a house site in order to obtain a mortgage. This report has been accepted by Ministers, and they have asked the Forestry Commission and the Crofters Commission to take this forward (Scottish Executive 2006).

USE OF CROFTS

Statutory conditions for croft tenancies and the use of crofts are set under the 1993 Act (section 5 and schedule 2). Section 11 of the Bill would make a number of changes to these conditions. These amendments are designed to allow diversification of use of crofts, and to provide new powers to bring neglected crofts back into active use.

The current conditions mean that crofts have to be used for agriculture, and can only be used for other purposes so long as they would not affect the cultivation of a croft, e.g. providing bed and breakfast in the croft house. The Bill would amend these conditions:

- to explicitly allow croft land for other 'purposeful' uses (section 11(2)(a))
- to make it explicit that every part of a croft must be cultivated or put to a purposeful use
- to introduce new conditions which would require the croft to be kept "in a state fit for cultivation" except where that was incompatible with a new purposeful use, or where the crofter is not cultivating the croft for conservation purposes
- to establish a test for determining whether the croft is being kept in a fit state - the extent to which weeds and invasive plants are being controlled.

The statutory conditions also set out the extent to which a crofter can agree to waive their rights under crofting law. Crofters can waive their rights to assign their croft, their right to buy, and their right to share in the value of land resumed by the landlord. Crofters cannot waive any other rights without the approval of the Scottish Land Court. The Bill would preserve this position, but would also require agreements to be notified to the Crofters Commission and entered in the Register of Crofts. Crucially, the Bill would allow such agreements to be binding on future tenants of the same croft – it is this provision which would allow landowners to create new crofts which would not be subject to the right to buy.

Section 12 of the Bill would also introduce new sections 5A and 5B into the 1993 Act. New section 5A would allow the landlord, or a member of the crofting community to complain to the Crofters Commission that the statutory conditions were being broken. The Commission could then apply to the Land Court, which if it upheld the application, could then order the crofter to comply with the conditions. If the crofter did not comply, the Court could make a further order terminating the tenancy. New Section 5B would allow a landlord or the Crofters Commission (with the landlord's consent) to apply to the Land Court for an order terminating a croft tenancy where a crofter has misused or neglected the croft. The Bill would create new definitions for misuse and neglect which do not currently exist in crofting law. "Misuse" is defined as using a croft other than for cultivating it or putting it to a purposeful use. "Neglect" would mean not keeping the croft in "good agricultural and environmental condition" – this is a requirement defined in law which crofters and farmers have to meet if they are claiming subsidies under the Common Agricultural Policy – and would be extended by the Bill to cover all crofts. Ministers would be able to amend the definition of neglect by making an order, subject to Parliamentary approval under the affirmative procedure.

One respondent to the draft Bill (Scottish Executive 2005g) commented that in their view up to 80% of crofts were uncultivated or under-used, and thought that these provisions did not reflect the situation on the ground. They thought that allowing crofters to report other crofters for neglect might stir up conflict and bad feeling within the community. Scottish Natural Heritage also referred to this (Scottish Executive 2005h). They thought that the underlying reasons were economic – current agricultural payments did not offer sufficient incentive to crofters to work their land – and therefore substituting one crofter for another was unlikely to solve the problem of land abandonment. They said that in some areas a reduction in agricultural management posed a risk to species, habitats and landscapes.

The Scottish Estates Business Group commented that allowing non-agricultural use of crofts could cause the value of crofting properties to rise, putting them beyond the reach of local people (Scottish Executive 2005i).

Some respondents opposed the wider purposeful use of crofts. One response (Scottish Executive 2005j) gave a clear explanation for this opposition:

Crofts are agricultural holdings and if you dispose of this principle, which we fear this Bill aims to do, you will quickly dispose of all the benefits they bestow on their communities. Housing is a different issue. Currently tenancy of a croft is the key to being able to afford to build your own house because of the grants available. The answer is not to demolish crofting but to extend the idea of giving grants to those who do not have crofts. [...] Look for poor agricultural ground to build houses on. Stop encouraging people to pretend they are interested in crofting in order to get a house and leave crofts to those who do want to use and maintain the land.

REGULATION OF CROFTING

The table below shows the number of different types of regulatory decisions taken by the Crofters Commission over the last five years.

Table 2 - Regulatory approvals granted by the Crofters Commission 2000/01 – 2004/05

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	Total
Sublettings	135	115	100	86	94	530
Subdivisions	25	21	22	20	44	132
Family Assignment	232	245	247	270	258	1252
Non Family Assignment	127	123	146	122	116	634
Total Assignations	359	368	393	392	374	1886
House site decrofting	198	192	208	223	233	1054
Part croft decrofting	240	240	223	295	406	1404
Whole croft decrofting	8	4	12	14	15	53
Total decroftings	446	436	443	532	654	2511
Area decrofted (ha)	84	238	131	171	168	792

Source: Crofters Commission (2006)

The regulation of crofting as a protected form of land tenure is the issue which has attracted most comment since the proposals in the draft Bill were published.

At the moment the consent of the Crofters Commission is required if the crofter wants to subdivide their croft into two or more crofts, sublet it to another crofter or assign their croft tenancy to another person, whether or not they are a family member.

The Bill would change the regulatory role of the Crofters Commission in deciding on some types of applications. The Bill would establish general requirements for obtaining Commission consent or approval in section 5 which would insert new section 58A into the 1993 Act. The new process would be:

- the crofter applies to the Commission, gives public notification of the application and informs their landlord
- there is a period of 28 days for the landlord or any other member of the crofting community to object

- if there are no objections, and the Commission considers that none of the general or special criteria apply to the case, it does not intervene in the application, and approval is granted
- if there are objections, or the Commission considers that any of the general or special criteria apply, the Commission will decide on the application
- if the Commission refuses the application, the crofter can appeal to the Scottish Land Court

The general conditions are whether the application would adversely affect the crofting estate; the crofting community; the sustainable development of the crofting community; or the public interest. Special conditions are set for different types of regulatory application.

Section 14 of the Bill would replace section 9 of the 1993 Act which would use the term “division” instead of subdivision. This would set two special conditions for the purposes of deciding whether the Commission should consider an application for division: whether the application was for the creation of more than 2 new crofts; or whether the croft to be divided had been divided previously. The Scottish Crofting Foundation (2005) and other crofters responding to the draft Bill consultation suggested that there should also be a minimum size below which crofts should not be able to be divided, to prevent them becoming little other than house plots with a large garden.

Section 15 would amend section 29 of the 1993 Act on subletting. This would set a maximum term of 10 years for sublets, and establish special conditions for consideration by the Commission that there were grounds for concern over the use a subtenant intended to make of the croft, or that they lived more than 16km from the croft.

Section 16 would amend section 8 of the 1993 Act on assignation. Special conditions would only apply to non-family assignations of crofts.

Crofters can market an assignation of their croft. The market decides how much the assignation is worth. This has led to croft tenancies changing hands at high value. The value of the assignation is generally less if there is no house on the holding, but the value of the assignation can still be much greater than the agricultural value of the croft land 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. A crofter may divide their croft, creating a new bare land croft without a house. They may even divide a croft into several smaller crofts and assign each one, in effect creating a housing development.

The concern is that this is putting the cost of obtaining a croft beyond local people and genuine crofters who want to cultivate their croft rather than using it as a second home, holiday let, or retirement home. The Crofters Commission is not thought to be using its powers to prevent this happening, e.g. by refusing assignations or subdivisions, and instead of doing something to stop this, the Bill is seen as making the situation worse by making it easier for crofters to assign their crofts, and making the Commission intervene less rather than more.

The Scottish Rural Property and Business Association (2005) thought that the draft Bill had not gone far enough to simplify crofting regulation. They consider that where there is agreement between crofter(s) and the landowner, there should be no reason for the Commission to be involved in a decision.

The Scottish Crofting Foundation (2005) explained that:

There is a widely-held concern over speculation in croft land which, raised as a concern by the SCU in the 1980s, has become increasingly prevalent in the last few years. There is concern that the Commission has stepped back from regulating the value of croft tenancy transfers and market forces have been allowed to take precedence. The strong housing market, effectively untouched by crofting regulation, has led to croft assignments transferring at sums outwith the reach of local people, especially the young, and multiple house sites being developed on individual crofts.

While the SCF is not opposed to the idea that a crofter can develop one house-site on a croft, the gradual break-up of crofts for housing development is seen by much of the crofting community as asset-stripping.

The SCF suggested that instead of having discretionary powers the Crofters Commission ought to be obliged to intervene and regulate crofting.

One grazing committee (Scottish Executive 2005k) put the view that assignments should have a market value:

We agree that croft tenancies have real value and should be treated as such. If the crofter and his family decide to relocate, they have to buy into an open market and it is only right that the croft house and tenancy plus improvements, should be a true reflection of their main asset.

The Highland Council (Scottish Executive 2005l) pointed out that crofters may not always want to sell their tenancy:

A consequence of the high values attributable to crofts is that the value of the tenancy becomes a significant capital asset to the crofter at death, divorce or admission to long-term care. This can lead to a distress sale of the tenancy and loss of opportunity for the croft to remain in the family. This will destroy crofting within a generation. The Council would like to see the Executive investigate solutions to this problem.

PROPER OCCUPIERS

If a crofter was unable to assign their tenancy to a third party, they could buy the croft and then sell it. If they sell the croft within 5 years of purchasing it the landlord is entitled to half the difference between the price the croft is sold for, and the price the crofter paid for it. Several respondents drew attention to a case known as the “Whitbread v Macdonald ruling” where under section 13(1) of the 1993 Act a crofter applying to buy their croft can nominate another person as the new owner without the landlord being able to claw back any of the value realised. They thought the Bill should be used to close this loophole.

When a crofter exercises the right to buy their croft they effectively become the landlord. Under a strict interpretation of crofting law they could be required to re-let their croft. The Crofters Commission’s (1999) current policy is that owner-occupying crofters will not be required to re-let so long as they live on or near the croft (within 16km). This would also apply to someone buying a croft so long as they live on it.

Unlike croft tenants, croft owner-occupiers are not currently subject to statutory conditions requiring them to cultivate the croft. This effectively means that crofts can be bought and sold in a similar way to other rural property, and is seen as contributing to the market in croft land.

The Scottish Executive intends to introduce amendments to the Bill at Stage 2 to introduce the concept of a proper occupier (Crofting Reform etc. Bill, Policy Memorandum). This would mean that owner occupiers of crofts would have to meet certain basic conditions, similar to those which have to be met by a croft tenant. If they did not, then the Crofters Commission could require them to re-let the croft to another tenant.

The idea is to maintain the link between crofting and active use of the croft land, discouraging lifestyle purchasers who want to live on a croft, but have no interest in working it. The intention is that by reducing demand for crofts that they will become more affordable for those interested in active crofting.

The Scottish Crofting Foundation (2005) supports the introduction of a requirement for owner-occupiers to cultivate their croft. They also suggested that the right to buy should be suspended for at least 5 years after an assignation, and that it should only become available for crofters who have been actively working their crofts.

REMOVING LAND FROM CROFTING TENURE

The Bill would make several changes to the law on resumption by the landlord and decrofting, which both remove land from crofting tenure.

At the moment, resumptions are permanent. The Bill would allow resumptions to be time limited. The Bill would also allow the Land Court to decide that land should revert back to crofting tenure if it is not used for the purpose for which it was resumed, if a person applied to the court at a date between 5 and 20 years after the land had been resumed. The Crofters Commission (2005) suggested that there should not be a time limit on the return of land to crofting tenure.

Land can only be resumed by the landlord for a reasonable purpose – the 1993 Act lists some examples of what this might include at subsection 20(3)(a). The Bill would add the generation of energy to this list.

Section 27 of the Bill would allow a decrofting direction given by the Crofters Commission to specify a time within which the land must be used for the purpose for which it was decrofted. If it was not used for this purpose, it would revert to crofting tenure. It would also allow the Commission to specify additional conditions retrospectively for up to 20 years after the decrofting, so long as the land had not been sold. The NFUS (2005) was opposed to this. They said that if a crofter had decrofted land they should know what they could do with it so they could plan and invest, and that the decrofting should only be revisited if the original conditions had been broken.

COMMON GRAZINGS

The Bill would make a number of changes to the provisions on common grazings in sections 50-52 of the 1993 Act. The landowners consent is required if crofters want to plant trees on common grazings. The Bill would amend section 50 of the 1993 Act to specify the only grounds on which an owner could refuse consent. It would also insert a new section 50A into the 1993 Act which provides for crofters and the landowner to enter into a joint forestry scheme. The Bill would also allow a crofter to propose that part of a common grazing to be used for another purpose other than grazing or forestry, e.g. for an environmental management scheme.

At present new common grazing can only be created if land adjacent to an existing grazing is included. The Bill would add a new section 51A to the 1993 Act which would allow for the creation of new common grazing on the application of the landowner. New common grazing could only be created within the crofting counties (new section 51A(5)).

If a common grazing committee has been established and has made common grazing regulations it is a criminal offence not to comply with these regulations. The Bill would replace this offence with a civil procedure which could result in a crofters' common grazing share being terminated, where if after being given up to 3 opportunities to comply, the Crofters Commission still considered the regulations were being broken.

Crofters can apply for an apportionment of part of the common grazings for their exclusive use. The Bill would allow for apportionments to be time-limited. It would also provide the Crofters Commission with powers to review apportionments, and for the apportioned land to revert to being part of the common grazing following such a review.

Respondents to the draft Bill consultation thought that the Bill also ought to amend the law on grazing committees, e.g. that they should be elected rather than appointed, that there should be a fixed number of terms for which someone could serve on a committee and that they should not have a say in regulatory decisions affecting individual crofters (Scottish Executive 2005m). One respondent suggested that the Crofters Commission should produce a code of conduct for grazing committees, and model constitution and grazing regulations (Scottish Executive 2005n). The Crofters Commission (2005) supported this suggestion in its response to the draft Bill consultation.

DEVELOPMENT SCHEMES

In recent years there has been a growing interest in renewable energy developments, particularly windfarms, in the Highlands and Islands. Some aspects of crofting tenure are thought to discourage these developments on croft land, particularly on common grazings (Scottish Executive 2005c). The normal route for this type of development would be for the landowner to resume control of the croft land. However, unless all the crofters in a common grazing agreed otherwise, they would have to be compensated for this, and would be entitled to a lump sum payment equal to half the development value. In the case of a major development the lump sum is likely to be substantial, and therefore acts as a disincentive to carrying out the development on croft land. Another possibility would be for crofters to enter into agreement with a developer that they would not exercise their rights on the land in question. This requires the approval of the Land Court. It would also require the agreement of all the crofters with shares in the common grazing. It is not clear whether such an agreement would be binding on the crofter's successors. It is also unclear whether an agreement could cover the use of surrounding land, or a crofter's rights to apportion part of the grazing.

The Bill would amend the 1993 Act to address these concerns. It would explicitly state that energy developments are a reasonable purpose for resuming land. It would provide for payments of the crofters share of development value to be made in instalments with the approval of the Land Court. It would allow agreements to be binding on a crofter's successors.

However, the Scottish Executive (2005c) considered that in spite of these amendments the process would remain "complex and uncertain". It has therefore proposed the idea of a development scheme. This idea would be given legal effect by section 34 of the Bill which would insert new section 19A into the 1993 Act. This would allow a landowner, or someone acting on

their behalf, to apply to the Land Court for consent to use croft land or common grazing to which they would append a development scheme. The Scottish Executive (2005c) explained that:

There would be no restriction on what the scheme might provide for in relation to crofts and common grazing and removal or modification of crofters rights in that property. It would require to put in place enforceable arrangements for securing payments to crofters, it might also alter or reduce the landlord's rights, it could bind a third party such as a developer and it could set in place arrangements for enforcing the provisions of the scheme.

The Land Court would consult the Crofters Commission and hear any objections from crofters before deciding whether the scheme could go ahead. In reaching a decision the Court would essentially have to decide whether the scheme was fair, and whether crofters would be compensated fairly. The Bill contains tests which the Court would use for these purposes.

One solicitor responding to the draft Bill consultation considered that it should be possible for the Court to amend the scheme, rather than just approving or rejecting it (Scottish Executive 2005o). The Scottish Renewables Forum (Scottish Executive 2005p) agreed with this. They also highlighted the lack of an appeal for the owner/developer if a scheme was refused by the Land Court, and the lack of information for an applicant as to why an application had failed, e.g. through the court having to give its reasons.

One crofter suggested that the provisions on development schemes should be reviewed after they had operated for 5 years. They also questioned how the Bill would provide for a situation where a developer failed to comply with the requirements of a scheme (Scottish Executive 2005q).

The Scottish Crofting Foundation (2005) questioned whether other amendments which would be made by the Bill still left a need for development schemes:

The issue with which it seems the development scheme purports to deal is that of crofting regulation acting as a disincentive for renewable energy development on croft land. In practice, this seems to have become a bit of a non-issue in the intervening period since the White Paper was discussed. There are numerous development proposals for wind farms on land in crofting regulation.

With proposals in the new s.20 of the 1993 Act for resumption to be temporary, it appears that the loss of land from crofting tenure which the schemes for development sought to avoid is less of an issue than might have been the case, were this provision not included in the Draft Bill.

CROFTING COMMUNITY RIGHT TO BUY

The Land Reform (Scotland) Act 2003 (asp 2) gave crofting communities an absolute right to buy their croft land including common grazings. In the draft Bill consultation the Scottish Executive said that it was aware of suggestions that landowners may seek to circumvent the crofting community right to buy by leasing or otherwise transferring property rights connected with their land prior to purchase by the crofting community.

It has become apparent that some owners of crofting estates have leased the land to one or more third parties. This third party could be a windfarm operator, a company controlled by the estate owner or both. These are called interposed leases because the leases come in between the lease which already exists between the landlord and the crofter. The legality of these leases

has been questioned. The Highlands and Islands Enterprise (2005) [website](#) explains the effect of the leases if they were found to be valid:

If the leases are competent and are not rescinded (withdrawn by the estate) they would have to be honoured by an incoming community landowner. This would be the case if the land is purchased via the provisions of the Land Reform Act or by a negotiated sale i.e. where the estate is a willing seller. The community would own the land but it would be controlled by the lease holder. It is most likely that the lease holder would become the crofting landlord in this situation. There is arguably little public benefit in community ownership of land that is leased to a third party. The principle purpose of owning the land – to enable it to be managed and developed for community benefit – would be frustrated by the lease.

If the leases are incompetent they would fall. Thus an incoming community landowner would acquire ownership of the land subject only to the interests of the tenant crofters.

Highlands and Islands Enterprise (HIE 2005) commissioned a [legal opinion](#) on the matter from Professor Roderick Paisley of Aberdeen University. He concluded that leases required the consent of the Crofters Commission to be valid. To date, no leases have been submitted to the Crofters Commission for their approval. The Scottish Executive (2005r) said it would [ask](#) the Land Court to rule on validity of interposed leases. The Court has not yet produced a judgement.

Part 6 of the Bill contains section 35 which would amend the Land Reform (Scotland) Act 2003 (asp 2) . It would insert new section 69A which would allow a crofting community body to apply to buy any right of a tenant at the same time as it applied to buy the land. The Bill would allow crofting community bodies to buy any such leases from the time at which they received consent to buy the land for up to 5 years after they had bought it. This would allow crofting communities who are currently in the process of buying their land to exercise the new right created by the Bill.

HIE (Scottish Executive 2005s) agreed with the proposal to extend the right to buy to include leases. It also commented that:

It is also apparent that, in circumstances where a landlord has progressed the development of a windfarm on leased land, the purchase of such a lease by the community may be prohibitively expensive. In such circumstances, a crofting community might apply to HIE's Community Land Unit for public funding to purchase a lease that only has such an inflated value due to planning permissions granted by the public in the first place. This would not seem to be in the public interest.

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SUBMISSION FROM SCOTTISH EXECUTIVE

**CROFTING REFORM ETC. BILL
PROPER OCCUPIER EXPLANATORY PAPER**

Introduction

1. Ministers have proposed that crofting law should be amended to clarify the status of owners of crofts to distinguish between those who actually live on or work their crofts and other owners of crofts. They propose that this should be coupled with a much more aggressive use of the existing Crofters Commission power to require owners of vacant crofts to re-let their crofts. The intention is to provide a framework and clear rules for management of owned crofts together with statutory protection from the Commission power to order the re-let of the croft to those who operate within these rules. It is proposed that owner- occupiers would be required to accept most of the constraints regarding management of the croft as apply to croft tenants. However, if they do so the Commission would not be permitted to ask for re-letting proposals or take action to seek a tenant for the croft.

2. Footnotes have been provided to show where alternative approaches were considered. The relevant footnote will make it clear why a particular option was chosen.

Background

3. Under crofting law there is an expectation that a croft will either be tenanted or, if vacant, will only normally remain vacant until a tenant can be found. The Crofting Reform (Scotland) Act 1976 made provision for a croft tenant to purchase the landlord's interest in his/her croft but made no specific provision to deal with the circumstances of such a purchaser once the croft has been acquired. A crofter who acquires his/her croft from the landlord becomes in turn the landlord of a vacant croft. Section 23 of the Crofters (Scotland) Act 1993 deals with vacant crofts and subsection (5) provides that the Crofters Commission may require the landlord of the croft to submit re-letting proposals. Subsection (10) makes it clear that a croft which is occupied is vacant if the occupier is not the tenant of the croft.

4. In practice the Crofters Commission has generally chosen to exercise the discretion given to it by section 23(5) of the 1993 Act in favour of persons occupying crofts which were acquired from the landlord by the croft tenant. It has done so whether that former tenant is the present occupier or was a predecessor in title to the present occupier. However, the Crofters Commission has also successfully required the owner of a croft, in such circumstances, to re-let the croft to a croft tenant.

5. The existing legislation does not deal with any potential ECHR implications of this power granted to the Commission and in practice the Commission would have to

consider the ECHR implications of any decision to order an owner who occupies his croft to re-let the croft. This would encompass consideration of Article 1 Protocol 1 and, where the occupier of the croft actually lives in a house on the croft, probably also Article 8.

Pressures for change

6. There has been long term pressure from crofting lawyers and croft owner occupiers for a change of crofting law to regularise and protect the position of croft owner occupiers. However, more recently there has been considerable concern on the part of some crofting interests over the regulation of crofting. This has centred on 2 related issues. The first of these is the purchase of crofts at market prices and the second is the alleged use of croft purchase to avoid the requirements of crofting regulation. This has led to suggestions that ways should be found to either greatly restrict the right to buy the croft which every crofter currently enjoys or find a way to restrict prices paid for crofts.

7. The right to buy is an essential feature of the relationship between the crofter and landlord. It provides the croft tenant with a sanction that can be applied to an oppressive or obstructive landlord. Its removal would give landlords a great deal of power over croft tenants. The right to buy is also essential to the achievement of long term sustainable investment in crofting areas because lenders will not provide large capital sums without security. Lenders expect borrowers to offer security in accordance with the normal arrangements which apply to the rest of society (i.e. in the form of a standard security over land or property free of restrictive burdens and owned by the borrower). This means that a crofter needs to buy the croft or the site of the croft house in order to borrow substantial sums for investment in the croft or in a business. For these reasons removal or significant restriction of the right to buy would cause long term social and economic harm to these areas (as well as being unacceptable to most crofters).

8. Controlling the price paid for croft tenancies or crofts which have been purchased by the former tenant is impossible. To do so effectively would require legislation permitting gross intrusions into the financial affairs of assignors and sellers which the Scottish Parliament has no power to impose. It would probably also require criminal sanctions to achieve any form of enforcement. Any attempt to control prices which did have an impact would also seriously damage the financial interests of existing croft tenants who have invested in their crofts and would possibly also inhibit lenders. Price controls over house prices were tried immediately after the second world war. The outcome was that purchasers paid the fixed price for the house and land plus additional huge sums for carpets and curtains which bore no relationship to the real value of these furnishings. Indeed it is suspected that this practice persists to this day in connection with stamp duty avoidance.

9. The only effective alternative to price control is to find ways in which ownership of a croft can be made less attractive to those who intend to own a croft but do not intend to use the land for an economically or environmentally useful purpose. This can be achieved by creating circumstances in which the risk to an owner occupier of having a croft tenant imposed is increased except where that

owner occupier is exempted. The Proper Occupier proposal is intended to deliver that outcome.

The proposal

10. The proposal is that a person who owns a croft and who was either the former tenant of that croft or the successor in title to a person who was the former tenant of the croft should be initially classed as a Proper Occupier of a croft. The term “Proper Occupier” is no more than a provisional designation at this stage. This classification would be capable of being lost if certain requirements specified in the legislation are not met within specified time limits and capable of being achieved by taking action to meet these requirements. In order to meet ECHR requirements there can be no automatic switch of status. It should be the responsibility of the Crofters Commission to confirm attainment of Proper Occupier status and give notice prior to loss of such status. Commission decisions to confirm or remove status should be subject to appeal in the Land Court. The requirements to be met to achieve Proper Occupier status would relate to residence and to management of the croft and, insofar as that is possible, would be the same as the requirements contained in the statutory conditions applicable to croft tenants.

Section 23 of the Crofters (Scotland) Act 1993

11. As indicated at paragraphs 3 and 4 above section 23(5) of the 1993 Act is crucial to the way former croft tenants who have purchased their croft and their successors are treated in crofting legislation. To make the Proper Occupier proposals work it is necessary to provide that notwithstanding the provisions of section 23(5) the Commission may not serve notice or take any other of the consequent actions permitted by that section if the person who owns the vacant croft is a Proper Occupier.

Proper Occupier

12. It is intended to provide that any natural person who at the date of commencement of this Bill owns a croft which was purchased by that person whilst he/she was the tenant of the croft or who is the successor in title to a croft so purchased will start out as a Proper Occupier. (This would mean that any individual who is currently the owner of croft and occupies the croft would not need to apply to become a proper occupier. It would however, exclude any owner of a tenanted croft or an owner which is a company, trust or partnership from proper occupier status.)¹

¹ Starting from an inclusive position is simple and avoids unnecessary bureaucracy. The first task for the Commission after implementation will then be to weed out those who should not enjoy Proper Occupier status. This can be done on a case by case basis over time but would allow early progress towards requiring re-letting in cases where owners are absentees.

The alternative option of requiring all existing owners to initially apply for Proper Occupier status would place a burden on every croft owner and would require that adequate time should be given for owners to apply and for the Commission to process applications before action could be taken against those who do not successfully apply.

Record of Proper Occupiers

13. There needs to be a public record of persons who are classed as Proper Occupiers so that when a croft changes hands the information in the Register of Crofts can be updated to record whether, where an untenanted croft changes ownership, there is a Proper Occupier and, if so, who that is. It will also be necessary to provide that at commencement of the legislation the Commission has time to update the records relating to crofts which were untenanted at commencement. It is considered that a period of 1 year will be sufficient time to enable this to be done and that this will be specified in subordinate legislation.

Becoming a Proper Occupier

14. It is proposed that any natural person who after commencement of this Bill acquires a croft from a Proper Occupier is a Proper Occupier². The intention is to cover every means by which ownership of a croft might be transferred to another person whether by purchase, gift, or succession and whether or not the transaction was for value.

15. It is necessary to put an arrangement in place to ensure that the Crofters Commission is informed of a change of Proper Occupier and the record on the Register of Crofts is updated. In order to minimise cost and bureaucracy it is proposed that this should normally be done by the purchaser, within 6 months of the date of registration of the transaction in the Land Register by sending the Commission such information as it may require (this could include a map based plan) to update the Register of Crofts. Failure to give proper notice in time will mean that the purchaser will not be initially treated as a Proper Occupier and will need to apply for that status. A person acquiring a croft from someone who is not a Proper Occupier (this would include a tenant purchasing his/her croft) will need to apply for Proper Occupier status.

² The approach adopted in relation to transfers and sales is not consistent with the approach applicable to assignation of a tenancy. In that case the assignation cannot take place without the consent of the Commission. There are difficulties in applying that approach to sales of property.

There appear to be 2 alternatives to the mechanism proposed. The first would be to provide that a transaction transferring a croft is void if it does not have the consent of the Commission. That would be complicated because it would not always be obvious that property being sold is a croft and even where it is clear that the land in question is in crofting tenure it would not necessarily be clear whether or not there is a croft tenant on the land or the land is common grazing land. In effect we would be bound to apply the requirement for consent to all transactions involving croft land. Indeed as croft land is not always adequately identified in the documentation relating to sales of land and in existing records in the Register of Sasines and Land Register it might mean that all sales of lands in the crofting counties would be affected by a need to check whether the land involved in the sale is croft land. This would add to sale costs. There are also implications for the Keeper's guarantee if the fact that such a transaction should be considered void is discovered after registration.

The second alternative would be to provide that any person purchasing a croft must apply either before or after completing the purchase to be classed as a Proper Occupier. This approach would require the Commission to review every transaction involving a croft. This would impose a significant additional bureaucratic burden which would deliver few benefits. There would also need to be time scales for application, for consideration of the application and for appeal. Putting this process in place before completion of purchase would draw out the timescales for completing the transaction and it would also need special and complicated arrangements for dealing with succession just as there are already for croft tenancies. If that sequence of application, consideration and appeal were to come after purchase then it would be difficult for the Commission to seek plans for re-letting whilst that process is underway.

The approach adopted avoids the worst of the bureaucratic burden and the need to make special arrangements to cover succession. It is consistent with the wider approach that the Commission should intervene only when necessary. In practice the approach adopted probably offers the shortest route to seeking plans for re-letting as it allows the Commission to give notice withdrawing Proper Occupier status within days of completion of purchase, if the evidence to do so is available.

16. It is intended to provide that an executor of a deceased crofter or any person who acquires control of a croft from a Proper Occupier as a consequence of calling in a standard security given in connection with a loan, sequestration or any other process by which a lender recovers assets from a defaulting borrower should be treated as a Proper Occupier for a period of 1 year from the date of acquisition³. We also wish to provide that persons in this category should be able to apply to the Commission for an extension of this period of up to one further year if it is necessary to have an extension in order to complete a sale.

17. It is intended that a person will cease to be a Proper Occupier after the end of a period specified in a notice given by the Commission or where the decision by the Commission to give notice has been the subject of appeal to the Land Court and the Court has determined that the notice is properly given.

18. Finally it is proposed that any person who acquires a croft (or part thereof) from its previous owner who was not a Proper Occupier or anyone who acquires part of a croft from a Proper Occupier (thus making division of crofts by owners an unattractive option) may apply to the Crofters Commission to become the Proper Occupier of that croft.

Application to become a Proper Occupier

19. An application to be confirmed as a Proper Occupier should be made to the Commission. The application process should be consistent with the process in new section 58A contained in section 5 of the Bill. This allows for a process of notification and objection to operate. However, the provisions at section 58A(3)(b), (4)(a), (4)(c), (9)(a)(i) would not apply and other provisions in that section insofar as they mention the landlord or owner would not be applicable. As well as the general conditions covered in section 58A(9) there should be special conditions applicable for the purpose of the equivalent of 58A(6) as follows: -

- the applicant lives or intends to live more than 16 kilometres distant from the croft.
- the applicant is the owner or tenant of another croft.
- the applicant lacks the knowledge, abilities and experience to cultivate the croft or to put it to such other purposeful use as the applicant intends.
- the applicant is the grazings clerk or a member of the grazings committee.

³ The intention is to make a Proper Occupier a more attractive proposition to a lender than a croft owner who is not a Proper Occupier. It means that someone lending to a Proper Occupier will not be faced with the risk of being asked to re-let the croft as soon as it transfers to the lender. The lender will also have the opportunity of selling on the croft with the advantage that any purchaser will start out being treated as a Proper Occupier rather than being expected to apply for Proper Occupier status. One year seems a sufficient time to enable the lender to sell on the property and wording this provision so that the status as Proper Occupier will automatically cease at the end of the period will cut the bureaucratic burden on the Commission.

- there are reasonable grounds for concern over the use to which the applicant proposes to put the croft.
- the land in respect of which the applicant is seeking confirmation as Proper Occupier is only part of a croft.
- at the date of application the applicant is not cultivating the croft or putting it to a purposeful use.
- the croft is not being managed to meet the good agricultural and environmental conditions standard.
- at the date of application the applicant is known to be in breach of one of the conditions applicable to the management of a croft by a Proper Occupier.

There should be provision for varying these conditions by means of a statutory instrument as provided in section 58A(13) & (14).

20. As under new section 58A the Commission may decide to intervene if there is an objection or where the conditions applicable for the purpose of the section 58A(6) or equivalent arise. Failure to intervene will constitute approval and on approval the Commission must record in the Register of Crofts that the applicant is a Proper Occupier.

21. The Commission should not be able to approve Proper Occupier status if at the time they are considering the application for that status it is established that any of the circumstances that would result in withdrawal of that status apply to the applicant or the croft. In other circumstances the Commission will have discretion as to whether or not they approve the application.

22. The appeal provisions in section 37 of the Bill (new section 52A) should apply to the decision on an application to be recorded as a Proper Occupier.

Action to terminate Proper Occupier status

23. It should be the responsibility of the Commission to determine whether Proper Occupier status is to be withdrawn. It is proposed that Proper Occupier status may be withdrawn if it is established that the person who is the Proper Occupier:

- does not ordinarily reside (this should have the same meaning as in section 22(1) of the 1993 Act) on or within 16 kilometres of the croft.
- is misusing the croft (in this context misuse of the croft would have the same meaning as in section 12 of the draft Bill - new section 5B(7) - and the qualifying provisions at new section 5B(8) & (9) should also apply).
- is neglecting the croft (in this context neglect of the croft would have the same meaning as in section 12 of the draft Bill - new section 5B(7) - and

the qualifying provisions at new section 5B(8), (9), (10) & (11) should also apply).

- has not either cultivated or put the croft to some other use being a purposeful use, so that every part of the croft is either cultivated or put to such use (in this context as in Paragraph 3 of Schedule 2 to the 1993 Act the work of cultivation may be done by the Proper Occupier, a family member or hired labour). “Cultivate” and “Purposeful Use” should have the meaning given by paragraph 13 of schedule 2 of the 1993 Act as amended by the Bill.
- has not kept the croft in a fit state for cultivation except insofar as the other purposeful use is incompatible with it being so kept (see new paragraphs 3A and 3B of Schedule 2). “Cultivate” and “Purposeful Use” have the meaning given by paragraph 13 of schedule 2.
- has not provided the fixed equipment on the croft that is necessary to enable the cultivation of the croft (see paragraph 4 of Schedule 2 to the 1993 Act)⁴.

⁴ Comparisons with conditions applicable to croft tenants are not straightforward. A number of the conditions applicable to croft tenants can only be enforced by the landlord and the Crofters Commission has no role either in terms of enforcement or consent. It is not relevant to substitute the Crofters Commission for the landlord in these instances because there are no coherent criteria which could be used by the Commission acting in place of the landlord where the relationship between landlord and croft tenant is essentially an economic relationship. There is therefore no equivalent to Paragraphs 5A, 6A, 9, 10, and 11 of Schedule 2 to the 1993 Act as these are irrelevant to the circumstances of a Proper Occupier who, of course, has no landlord. In relation to Paragraph 10 a Proper Occupier who becomes insolvent is likely to be forced to sell up to pay the debts. The provision at Paragraph 5 of Schedule 2 is also inapplicable because it is not a prohibition on injury to the croft it is simply a protection for the landlord's interest in the croft which, in the circumstances of a Proper Occupier is irrelevant.

There is a parallel to the provisions of Paragraph 9 to Schedule 2 in titles to property. The various restrictions that can be imposed to protect third party interests relating to owned property are normally in the form of rights held by others which are enforceable in law and recorded in the title to the property. The Crofters Commission will not be aware of these real rights in the property and would therefore be unable to take action when they are breached whereas the persons holding these rights will be able to enforce them through the Courts. There is therefore no need to replicate the provisions of paragraph 9 of schedule 2 in the conditions applicable to Proper Occupiers.

The provision at Paragraph 7 of Schedule 2 is dealt with differently because in the case of an owner Paragraph 7 of Schedule 2 is a meaningless proposition. Paragraphs 8 or 12 of Schedule 2 have not been replicated because these are not absolute conditions and do not prevent construction of more than one house on the croft or the opening of licensed premises on the croft. In the case of a tenanted croft the decision as to how many houses may be built on a croft or whether the croft can be the site of licensed premises is a matter to be determined by the croft tenant and landlord. These are conditions which are negotiable and can often be resolved by a suitable financial arrangement between a croft tenant and his/her landlord. The other parties who have a say in the matter are the properly constituted planning, building control (and licensing) authorities. The Crofters Commission has no involvement and to make these conditions applicable to a Proper Occupier would impose greater constraints on a Proper Occupier than apply to a croft tenant and his landlord.

- has let the croft other than by means of a holiday let of a house or other building⁵.
- Has control of more than 4 crofts either as tenant or owner.

24. The Commission should be free to instigate action to establish whether the circumstances listed in paragraph 23 above arise on the basis of a complaint from a member of the crofting community or on the basis of information held by the Commission. As with section 12 (new section 5A) of the Bill a complaint must specify that one of the circumstances listed in paragraph 23 above has arisen. Where there is a complaint the Commission is to have discretion as to whether it takes action and there should not be scope for the complainant to appeal a Commission decision not to take action.

25. If the Commission decides to act on a complaint or has concerns that one of the circumstances listed in paragraph 23 above arises it should give written notice to the Proper Occupier indicating the nature of the complaint or concern and of the intention to terminate that person's Proper Occupier status if it is established that the breach has taken place. The legislation must provide that the notice should give the Proper Occupier the opportunity to remedy the situation within a reasonable period. That period should be a minimum of 42 days or such longer period as the Commission considers reasonable. Where it is alleged that the Proper Occupier has neglected the croft and the Proper Occupier agrees that neglect has occurred the period allowed for remedial action should be 1 year.

26. The notice given by the Commission should also give the Proper Occupier an opportunity to give a written response to the allegation in the notice. It must be open to that person to give reasons why the allegation is not correct and that person will have 42 days to do so. It should be possible for such a response to be in other permanent forms (see section 24 of the Bill – new section 38(11)).

27. The Commission should be required to consider and respond to any representations made by the Proper Occupier and if requested to do so should hear that individual's representations on the matter. It may then either withdraw the original notice or confirm it in writing, with or without amendment, giving reasons, explaining the implications of withdrawal of Proper Occupier status and setting a date on which that status will be withdrawn if the breach complained of is not remedied. If the breach is neglect of the croft then the date will be 1 year from the date of confirmation of the notice. In any event the date set should be no sooner than 42 days after the date of confirmation of the notice. This will allow time for the Proper Occupier to appeal the decision as new section 52A provides that an appeal against a Commission decision must be made within 42 days.

⁵ Providing for holiday lets matches the proviso to Paragraph 6 of Schedule 2 to the 1993 Act which enables croft tenants to let all or part of their croft for holiday purposes. Such a provision would also effectively make it clear that the provisions of section 23(3) would preclude holiday letting by owners who are not Proper Occupiers and thus create a new incentive to become a Proper Occupier.

28. On the date on which the notice takes effect, or, if there has been an appeal to the Land Court, on the date the Commission is informed of the Court's determination of the appeal (if the Land Court endorses the Commission decision) the Commission will amend the register of crofts to indicate that the owner of the croft is not a Proper Occupier⁶.

⁶ There are 2 possibilities as to how matters should proceed to termination of Proper Occupier status. Action relating to termination of a tenancy is handled in the Land Court and it would have been possible to put in place a procedure whereby decisions as to whether Proper Occupier status should be ended would be made by that Court. However, ending Proper Occupier status simply opens up the croft owner to the possibility that the Commission will ask the owner to re-let the croft and a court process would be both cumbersome and costly for all the parties.

It is not intended to amend the provisions relating to vacant crofts to remove the discretion available to the Commission in relation to re-letting. The re-letting process does not involve the Land Court. The provisions of the Bill as they currently stand will allow an appeal to the Land Court against a Commission decision on a re-letting proposal by the owner and on a Commission determination as to which applicant they let the croft in the event that they have invited applications for the tenancy under section 23(5B). So the court process is in the form of appeal against decisions relating to re-letting.

Given this background it is proposed that the process of deciding whether Proper Occupier status is lost or retained should be the responsibility of the Commission rather than a Court process. There would of course be scope for an appeal to the Land Court against the Commission decision on Proper Occupier status in the same way as the Bill provides for any other decision of the Commission to be subject to appeal.

Holiday lets etc.

29. A new provision is also required to the effect that notwithstanding the requirements of section 23(3) a Proper Occupier may let any house or other building on his croft to holiday visitors⁷.

⁷ Providing for holiday lets matches the proviso to Paragraph 6 of Schedule 2 to the 1993 Act which enables croft tenants to let all or part of their croft for holiday purposes. Such a provision would also effectively make it clear that the provisions of section 23(3) would preclude holiday letting by owners who are not Proper Occupiers and thus create an new incentive to become a Proper Occupier.

**CROFTING REFORM ETC. BILL
PROPER OCCUPIER EXPLANATORY PAPER
SUMMARY OF PROPOSALS**

- A natural person who owns a croft at commencement of the Bill and who was either the former tenant of that croft or the successor in title to a former tenant should be initially classed as the Proper Occupier of that croft
- The Crofters Commission may not serve notice on a Proper Occupier to require him/her to re-let his/her croft.
- There should be a public record of Proper Occupiers and the information in the Register of Crofts should be updated to record whether, where a croft changes ownership, there is a Proper Occupier and, if so, who that is.
- The Crofters Commission should have 1 year to update the records on the Register of Crofts relating to crofts which were untenanted at commencement.
- Any natural person who, after commencement of this Bill, acquires a croft from a Proper Occupier will automatically become a Proper Occupier by giving the Commission notice of the change of ownership.
- Any lender who calls in a standard security over a croft owned by a Proper Occupier should be treated as a Proper Occupier for a period of 1 year.
- There should be a new provision to allow a Proper Occupier to let any house or other building on the croft to holiday visitors.
- Any person who acquires a croft (or part thereof) from a previous owner who was not a Proper Occupier (including a tenant buying from the croft landlord) or who acquires part of a croft from a Proper Occupier may apply to the Crofters Commission to become the Proper Occupier of that croft.
- Notice of a change of ownership must be given to the Commission within 6 months of the date of entry, The form of this notice will be determined by the Commission (but will probably be linked to the Land Register entry for the sale).
- Failure to give notice in time will mean that the purchaser will not be a Proper Occupier and will need to apply to the Crofters Commission for that status.
- The application process should be consistent with the process in new section 58A contained in section 5 of the Bill. This allows for a process of notification and provides scope for members of the crofting community to object.
- As well as the general conditions for intervention applicable to all applications to the Commission the following special conditions for intervention should apply to applications for Proper Occupier status:

- That the applicant lives or intends to live more than 16 kilometres distant from the croft.
 - That the applicant is the owner or tenant of another croft.
 - That the applicant lacks the knowledge, abilities and experience to cultivate the croft or to put it to such other purposeful use as the applicant intends.
 - That the applicant is the grazings clerk or a member of the grazings committee.
 - That there are reasonable grounds for concern over the use to which the applicant proposes to put the croft.
 - That the land in respect of which the applicant is seeking confirmation as Proper Occupier is only part of a croft.
 - That at the date of application the applicant is not cultivating the croft or putting it to a purposeful use.
 - the croft is not being managed to meet the good agricultural and environmental conditions standard.
 - That at the date of application the applicant is known to be in breach of one of the conditions applicable to the management of a croft by a Proper Occupier.
- There should be provision for varying these conditions by means of a statutory instrument.
 - the Commission may decide to intervene if there is an objection or where the conditions for intervention apply. Failure to intervene will constitute approval and on approval the Commission must record in the Register of Crofts that the applicant is a Proper Occupier.
 - The Commission should not be able to approve Proper Occupier status if it is established that any of the circumstances that would result in withdrawal of that status apply to the applicant or the croft.
 - The appeal provisions in section 37 of the Bill (new section 52A) should apply to the decision on an application to be recorded as a Proper Occupier.
 - The Crofters Commission should determine whether Proper Occupier status is to be withdrawn.
 - It is proposed that Proper Occupier status may be withdrawn if it is established that:

- The Proper Occupier has ceased to ordinarily resident on or within 16 kilometres of the croft.
 - The Proper Occupier is misusing the croft.
 - The Proper Occupier has neglected the croft.
 - The Proper Occupier has not either cultivated the croft or put it to a purposeful use.
 - The Proper Occupier has not kept the croft in a fit state for cultivation except insofar as it is put to another purposeful use.
 - The Proper Occupier has not provided fixed equipment on the croft necessary to enable the cultivation of the croft.
 - The Proper Occupier has let the croft other than by means of a holiday let of a house or other building.
 - The Proper Occupier controls more than 4 crofts.
- The Commission should be free to take action to withdraw Proper Occupier status either in response to a complaint or on the basis of information it holds and should have discretion over whether it does so.
 - There should not be scope for a complainant to appeal a Commission decision not to act.
 - If the Commission decides to act it should give written notice to the Proper Occupier of the complaint or concern and of the intention to terminate the Proper Occupier status if it is established that a breach has taken place.
 - The notice should be subject to confirmation and should specify a date, no sooner than 42 days after the date of confirmation of the notice, on which Proper Occupier status will be withdrawn if the breach is not remedied.
 - Where it is alleged that the Proper Occupier has neglected the croft the period allowed for remedial action should be 1 year.
 - The notice should give the Proper Occupier 42 days to give a written response to the allegation in the notice and to give reasons why the allegation is incorrect.
 - The Commission should consider and respond to representations by the Proper Occupier and, if requested to do so, should hear that individual's representations on the matter.
 - The Commission should then either withdraw the original notice or confirm it and (with or without amendment).

- If the notice takes effect the Commission will amend the Register of Crofts to indicate that the owner of the croft is not a Proper Occupier.
- The Commission may then to invite the owner to submit proposals for re-letting the croft.

SUBMISSION FROM DEREK FLYN, CONSULTANT WITH MACLEOD &
MACCALLUM SOLICITORS, INVERNESS

Evidence on the general principles of the Bill

Availability of Land

Individuals will always pursue their own interests and the law of Scotland entitles them to maximise the value of their assets. There is nothing new in this.

The purpose of the crofting system is not static. Its goals are debatable. Any changes are therefore open to criticism. However, the law relating to crofters and their holdings comes with considerable historical and emotional baggage. It seems to me that rights in crofts were originally bestowed by historical chance. The present holders of these rights obtained them by inheritance, luck or at a price. Nobody holding these rights is easily persuaded to release them to the benefit of others. **The Bill deals with the new simplified methods by which rights in tenanted crofts are transferred.**

Like crofters, we all want our children to be given better opportunities but a market will operate where there is a supply and demand. It is my belief that closer control of the occupancy of crofts would help sustain crofting communities by making crofts available which are not properly occupied. Despite the present Register of Crofts having been in existence for 50 years, the recording and tracking of ownership and occupancy of crofts has not been done well. It is my long-held belief that this can only be accomplished by **the proper maintenance of a map-based register made possible by this Bill.**

The law of crofting is unusual if not unique. It is the law of a different land. But that land does not have uniformity. Different areas require different protections. Some are more remote than others. Some are agriculturally active, some are not. **The Bill allows communities to decide how they want crofting to evolve in their locality.**

B. Evidence specifically on
B.1 the purpose of crofting

Although based on a year-to-year agricultural tenancy, the effect of crofting law has been social engineering by providing security of tenure for people occupying certain land. It is not a blanket coverage but piecemeal protection depending primarily on the position found to exist in 1886 by the first Crofters Commission.

It is land that is being protected. It is land historically identified for the use of those occupying it. It is land safeguarded and made available to ordinary people in extraordinary places. These places are generally not easy places to

live or to make a living. Nonetheless they are places susceptible to those attracted to remote and romantic locations, including those whose can afford to live elsewhere.

The purpose of crofting is

- despite the wording of the statutes, no longer primarily agricultural.
- to protect land identified as crofting land for that continuing purpose.
- to provide security to crofters and their families in their occupancy of that land.
- to anchor communities in inhospitable places (where there are few advisers, solicitors or officials) and to provide a user-friendly, dedicated legal structure and system for the protection of crofting lands and those properly occupying them.

B.2 Crofting and land reform

Crofting is emotive. It historically righted a wrong. It can be geographically identified.

Some crofting communities will be motivated to acquire and administer their own lands. Some will not.

The boundaries of old estates may not be suitable for community buyouts. Township buyouts are an alternative which might prove more attractive.

B.3 The main issues surrounding crofting:

The Tenacity of Tenancy

- Against a background of a struggle against a landowning class and its successors, the desire to remain a tenant is a peculiarity that is not easily explained.
- Administrative responsibilities of landlords have been taken over by the Crofters Commission.

The Opportunity of Crofting Communities to manage themselves

- There is now a possibility for a transition from a traditional landlord/tenant relationship to something new.
- Some crofting communities are reluctant to participate.
- In some areas, most crofts have been purchased by individuals and crofting communities are difficult to identify. In others, no crofting community exists there being no active common grazing.

Uncertainty of Future

- There is a perception that changes to processes will be detrimental financially, e.g. loss of subsidies, vulnerability to care charges, family disputes regarding the value of crofts on succession, inheritance tax.
- Sustainability of Crofting Communities.

- Sustainability of crofting as an agricultural way of life.
- Availability of croft land for new tenants.

And whether the bill responds to these issues

B.1 The purpose of crofting

The Tenacity of Tenancy

- Whereas Scots Law treats the crofting tenancy like a landlord/tenant relationship, many of the participants do not know their parts in that relationship. For instance, some landlords have no records of boundaries. Many tenants have no knowledge of the (statutory) conditions of their tenancies.
- There appears to be no general demand for the landlord (like a feudal superior) to be abolished from the system. The position of landlord has been usurped by the functions of the Crofters Commission.
- The activities of some landlords cause difficulties to tenants. Most crofting landlords are inactive and have little impact on their tenants.
- The crofter's right to buy has not been universally exercised. It is however a valuable protection against a difficult landlord.

The rights of crofters are not affected provided they obey the statutory conditions, which have been relaxed in accordance with present realities.

The Opportunity of Crofting Communities to manage themselves

- Several crofting communities have shown themselves able and willing to act as local landlords. Not all of them have this ambition. Large estates containing more than one crofting community may be unsuitable for local management.

Local decision making should result in greater confidence that communities are being protected.

Uncertainty of Future

- However much we would like the Highlands and Islands to have a thriving agricultural economy, the truth is that the Crofting Counties are always going to be at a disadvantage. The present system is based on agricultural tenure of land but this is no longer its strength. That is recognised by the Bill.
- The points of control are when a tenancy changes. Re-letting must follow termination of proper occupation by removal, renunciation, absenteeism or abandonment. Changes in occupation on transfer within family, outwith family, succession on death within family, outwith family. All of these require participation by the Crofters Commission. The availability of land for the people to occupy must be protected. The difficulty

has been the reluctance of those who acquire rights in the land to relinquish them when they no longer occupy these lands. Land not properly occupied is not made available for others. This requires to be confronted by the Crofters Commission but without information, they have been frustrated by the need for enquiry.

The maintenance of a map-based register of land subject to crofting controls and of the proper occupiers of that land will provide a valuable tool for the Crofters Commission to ensure each croft is properly occupied and for others to identify the status of land in the crofting areas.

Note on Proper Occupation of Crofts

Since 1976, crofters have been permitted to purchase their croft land but by doing so have technically lost their status as crofters. This has not been addressed by legislation.

- Crofting provides a method whereby the actual occupation and use of land can be controlled.

The Register of Crofts should include details of the owners of any crofts and the name of the individual owner identified as the proper occupier of each croft. That proper occupier can then be checked for absenteeism. Where a croft is not properly occupied it should be re-let in the normal way.

SUBMISSION FROM BRIAN WILSON

I have seen the evidence submitted by Dr James Hunter and will not reiterate the historical background. What is essential for members of the Committee to understand is that crofting is, and can only be, a regulated form of tenure which requires tenants to observe certain defined conditions in return for the considerable benefits bestowed by their status as crofting tenants. These conditions largely to their occupancy and use of the inbye land.

Like any regulated system, crofting tenure depends on the enforcement of regulation. In the absence of such enforcement, the system disintegrates along unregulated lines. The urgent need for action in crofting communities derives from the quite rapid breakdown of that regulatory system. The first question that the Committee should address is whether that issue can be resolved through the application of existing legislation, as some would argue. The Crofters Commission should be called to account for their widely-perceived failure to require incoming tenants to satisfy the criteria which they are, under existing legislation, expected to demand.

The Crofters Commission has taken to arguing that these powers are inadequate and that they cannot be held responsible for the erosion of crofting communities through the transfer of tenancies into non-crofting hands. They further protest that recent decisions by the Scottish Land Court have, de facto, legitimised de-crofting as a device for circumventing decisions by the Commission which are intended to prevent speculation in croft land. These claims by the Crofters Commission must be examined and tested. If they are found to be valid, then the proposed legislation should be directed towards strengthening the regulatory system. The Bill as it stands at present takes the contrary approach - of changing the law in order to accommodate the abuses.

There is no suggestion that the Crofters Commission should be able to dictate the identity of the incoming tenant to the outgoing tenant. This has never been the case. However, the Crofters Commission has always had the duty to veto the transfer of tenancies to nominees who do not have credible status as potential crofters. It is this duty that has fallen largely by the wayside for reasons that the Crofters Commission should be obliged to explain. There is no point in a regulatory body that does not regulate. The real decision which the Committee has to take is whether or not it is in favour of retaining a regulated system of tenure which has, as James Hunter explains, been crucial in retaining population in these places for more than a century. If so, then regulation must be made effective either through new legislation or enforcement of existing legislation. If not, then the pretence should be abandoned.

Under the terms of the draft Bill, open market valuation would be attached to crofting tenancies for the first time. It is my contention that this provision is utterly incompatible with the concept of a regulated system of tenure. In order to argue otherwise, it is necessary to believe that the Crofters Commission would become more interventionist in a free market environment than it has been in the one which currently exists. This is not only improbable but ludicrous. All experience and common sense states that the more money is involved in the system, the less likely the already ineffectual regulator (the Crofters Commission) is to intervene in the workings of the market.

For confirmation of this fact, members of the Committee need look no further than the summary of consultation on the draft Bill submitted to them by their officials. In that document, the author recalls the debate over the "right-to-buy" provision in the 1976 Crofting Reform Act (which is at the root of many of the subsequent difficulties). At that time, defenders of the right to buy argued that an adequate and indeed intrinsic legal safeguard of the crofting interest existed. This lay in the fact that the so-called owner-occupier was not actually buying the croft but only the landlord's interest in the croft. In other words, the occupant had become the tenant of himself. Logically, therefore, the landlord could be required by the Crofters Commission to require re-letting proposals from a tenant (albeit the 'owner-occupier') who was not making appropriate use of the croft. Those of us who opposed owner-occupation argued that this was a ludicrous hypothesis which would never happen in the real world. We were right - and nearly 30 years later, your official has confirmed that all along it was "a legal fiction" - her words!

What members of the Committee must appreciate is that they are now being asked to endorse another - and much more terminal - "legal fiction". For a range of reasons, the "right-to-buy" was not widely exercised under the 1976 Act. What happened instead was that solicitors and estate agents in the Crofting Counties started advertising "crofts for sale" when what was actually being offered for sale were crofting tenancies. I have long argued that the Crofters Commission should have nipped this practice in the bud. However, the result is that tenancies (often of bare, absentee-tenanted crofts) are now sold for very substantial sums of money - as James Hunter says, the market valuations have increased very sharply in recent years and will undoubtedly continue to escalate. All the evidence suggests that the more money is at stake, the less likely the Crofters Commission is to intervene. The result is that, to a significant degree, an unregulated trade in tenancies has been allowed to develop.

The consequences of this are very easy to research. Increasingly, crofts are being "bought" as glorified house sites by people of means who have no interest in working them according to crofting principles. This is undermining the fragile workings of many crofting communities and is excluding local people of limited means from the market. A system which has been so successful for so long in retaining a substantial indigenous population is now, through regulatory opt-out, being replaced by a de facto free market in which the least likely people to

succeed are those who have a background in, and commitment to, crofting. The idea that the legitimisation of that trade is going to lead to more rigorous regulation of it is no more or less than "a legal fiction".

I have heard Rhona Brankin and Ross Finnie arguing that crofting tenants who have put a life's work into the cultivation of their few acres should not be denied the proceeds of a free market sale. This represents a complete misunderstanding on several counts. First, the least-likely people to sell tenancies to the highest bidders are those portrayed by Ministers. Those who have a loyalty towards crofting are much more likely to pass on their tenancies to family members or to others who have a commitment to carrying on their work. By far the most likely people to sell tenancies at market values are those who are absentee and/or bear no loyalty to crofting principles. In that respect, the Bill is simply a speculator's charter. I know of many cases in which people of crofting background who want to "do the right thing" and obtain only agricultural value for the tenancy are being pressurised and harassed by those who believe (not unreasonably) that "market forces" are already the order of the day. That is the ethos which the Bill as it currently stands would legitimise.

I would cautiously support James Hunter's proposal that this aspect of the Bill should be withdrawn pending further investigation. However, such is the pace of events, I believe that this would have to be accompanied by an instruction - repeat instruction - to the Crofters Commission that they must implement their regulatory role with rigour in the period that followed. I would also suggest parallel discussions with the Scottish Land Court - a body long held in high respect by the crofting community - to establish the validity or otherwise of the Crofters Commission's complaint about their recent willingness to approve de-crofting applications. This may prove to be an area in which legislative amendment is required.

Like James Hunter, I welcome the provision for the formation of new crofts and particularly the inclusion of Arran, in my former constituency, within the Crofting Counties; the righting of an historic wrong. But of how much value will this be, and for how long, if the tenancies can then be sold on to the highest bidder? My particular puzzlement with the determination to press on with the free market in tenancies lies in its complete incompatibility with other policies on rural housing being pursued by the Scottish Executive at considerable cost. As young local people are increasingly excluded (as is already happening) from the burgeoning market in croft tenancies, where are they supposed to go? Glasgow? London? Social housing in their own areas from which they can overlook, if not actually work on, the crofts from which they have been excluded by the glorious free market?

The system of crofting tenure has retained substantial population in the most peripheral parts of Scotland for more than a century. These places need that system now more than ever in order to exclude that market. That should be the guiding principle of any legislation and of the direction given by the Scottish Executive to the Crofters Commission.

SSI DESIGNATION FORM

SSI Title & No:	The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006, (SSI 2006/151)					
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	The purpose of this instrument is to amend the existing regulations which established a legislative framework for the control of pesticide residues in food enabling maximum residue levels ("MRLs") to be set, monitored and enforced. These regulations are amended on a regular basis to establish MLRs for all pesticides in a wide range of foodstuffs.					

Laid Date	15 th March 2006	40 day date	10th May 2006
1st SLC Meeting	21 st March 2006	20 day date	21 st April 2006
Lead Committee Report Due	1st May 2006	Other Committee Report Due	

SE Contact	Mary Lourie, ext. 44403
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	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								

Subordinate Legislation Committee

Extract from 15th Report, 2006 (Session 2)

Subordinate legislation

The Committee reports to the Parliament as follows—

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2006, (SSI 2006/151)

1. The Committee asked the Executive why “principal Regulations” is defined in regulation 3 given the term is used only once in the instrument thereafter.
2. In its response in Appendix 9, the Executive accepted that the use of the definition “principal Regulations” could have been avoided which would have necessitated reference to the full title of the principal Regulations in the headings to the Schedule. Nevertheless, the Executive does not consider that the drafting approach will cause any confusion to the reader.
3. **The Committee draws the attention of the lead Committee and the Parliament to these Regulations on the grounds of a failure to follow proper legislative practice.**
4. The Committee also asked the Executive why the words “subject to” have been used in regulation 3 when it appears that the provisions referred to do not qualify regulation 3.
5. The Executive, in its response, maintains that the use of the words “subject to regulation 1(3) and (4)” was appropriate because regulation 3 comes into force on 27 April 2006; and that without the qualification to the different commencement dates in regulations 1(3) and (4), would have the effect of making the amendments made by regulation 4 to 6 at that stage. Without the qualification “subject to”, it submits that there would be tension between regulations 1 and 3. The Executive considers the legal effect to be clear to the reader.
6. The Committee does not agree that the effect of commencing regulation 3 on the earlier date without qualification would negate the effect of regulation 1(4) and (5). It considers that the Regulations must be read as a whole and therefore the commencement provision has effect without the need for subsequent reference to it in the provisions which follow.

7. The Committee does however acknowledge the Executive's attempt to clarify the point for the reader and accepts that the regulations have this effect.

8. The Committee draws the attention of the lead Committee and the Parliament to these Regulations on the grounds that clarification was requested from and supplied by the Executive.

APPENDIX 9

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006, (SSI 2006/151)

On 21 March 2006, the Committee asked the Executive for an explanation of the following matters:

(a) why “principal Regulations” is defined in regulation 3, as the term is used only once in the instrument thereafter; and

(b) why the words “subject to” have been used in regulation 3 when it appears that the provisions referred to do not qualify regulation 3.

The Scottish Executive responds as follows:

1. On question (a), the Executive notes that “the principal Regulations” is defined in regulation 2 and used once in the instrument thereafter. It is also worthy of note that “the principal Regulations” is used in each of the Schedule headings however it is appreciated that the Schedule headings are neither an operative part of the Regulations nor of the principal Regulations. The Executive recognises that the use of regulation 2 could have been avoided with regulation 3 simply referring to the principal Regulations by their full title. However references to the full title of the principal Regulations would then also have been used in the Schedule headings. The Executive does not consider that the drafting adopted will cause any confusion for the reader of the Regulations.

2. As regards question (b), the substantive effect of regulation 3 is “subject to regulation 1(3) and (4)”. Regulation 3 comes into force on 27th April 2006 and without qualification would direct the amendments made by regulations 4 to 6 at that stage. Yet regulation 1(3) and (4) provides that regulations 5 and 6 do not come into force until 10th May 2006 and 21st April 2007 respectively. Without the “subject to” qualification there would be tension between regulations 1 and 3 in that regard. Whilst the Executive considers that alternative drafting approaches would have been available, the Executive considers that the legal effect, as drafted, is clear and will be clear to the reader, which is ultimately the aim of the qualification.

Agenda Item 1

**Environment and Rural
Development Committee**

19 April 2006
ERD/S2/06/12/1f

SUBMISSION FROM PROFESSOR JIM HUNTER

1. Though not a crofter, I've had a long involvement with crofting. I've written two books about its development. I helped set up, and became first director of, the Scottish Crofters Union, now the Scottish Crofting Foundation. I pressed over many years for community ownership of the type now commonplace. And in various public capacities, most recently as chair of Highlands and Islands Enterprise, I've had a lot to do with crofting issues.

2. Crofting owes its existence to the Crofters Act of 1886. Passed in the aftermath of the Highland Clearances and in response to crofting demand, articulated by the Highland Land League, this measure – by the standards of its time and ours – was a far-reaching interference with the market. The Act took from landlords their freedom to set crofting rents (which have since been judicially controlled) and their ability to remove crofting tenants (thus making further clearances impossible). This latter objective was achieved by entitling crofters to a peculiarly absolute form of security of tenure which includes the right to transfer their tenancies to persons of their choice – family members and others.

3. The 1886 legislation, then, secured the survival of crofting by safeguarding it from market forces – then making for the creation of large hill farms, sporting estates and the like – which would otherwise have destroyed it. This legislation, however, did not reverse the Highland Clearances by restoring to crofters the land from which they or their forebears had been removed. Following renewed agitation, this omission was partly made good in the early twentieth century by further reforms (again undertaken in defiance of free market doctrine) resulting in the provision of thousands of new crofts – usually on land acquired for this purpose by the state.

4. Because of what was done legislatively in 1886 and later, as well as because of what has been accomplished by way of helping crofters develop their crofts and build homes on them, the crofting areas are characterised by populations that are comparatively dense by rural standards – crofting supporting, as it were, far more people per hectare than any other available land use.

5. Crofting's population-sustaining capacity is, and always has been, bound up, with the small size of crofts. This means that few crofters make, or have made, a full-time living from agriculture. It follows, in turn, that the viability of crofting communities, at any point, depends more on the health of the wider rural economy of which crofters are part than it depends on agriculture pure and simple. *This point requires constant emphasis.* Although crofting is manifestly a system of land use, it is one which has been, and is, only partly – and often minimally – bound up with working land agriculturally. Hence one

difficulty which successive administrations have had in framing policy for crofting. Because crofting policy-making has usually been the prerogative of agricultural departments, there has been a tendency for crofting to be seen by policy-makers as a variant – sometimes a failed variant – of farming. It isn't.

6. Thus in the 1950s, when the Crofters Commission was put in place, crofting – despite UK agriculture then booming – was in crisis as a result of difficulties affecting the wider Highlands and Islands economy. This economy was contracting; non-agricultural sources of income (always vital to crofters) were limited; depopulation was rampant. Although crofts could be got for the asking, there were few takers – with hundreds of holdings lying vacant.

7. The position today, despite the problems afflicting UK agriculture, couldn't be more different. The Highlands and Islands economy is now expanding – with total employment up more than 50 per cent on the 1960s and with the regional joblessness rate, once a multiple of the Scottish figure, now well below it. In these circumstances, previous demographic trends have altered markedly. During the last 40 years, despite Scotland's total population having been static or declining, Highlands and Islands population has grown by a fifth. In some crofting areas, the rate of population increase has been higher. And in almost all crofting areas, where there was once only out-migration, there is now substantial in-migration – much of it driven by a wish, on the part of incoming individuals, to access the high-quality environment which crofting has done so much to preserve. The inevitable consequence has been that, instead of there being no demand for crofts, there is now overwhelming demand – with the further result that, where both croft tenancies and owner-occupied crofts once changed hands for nominal sums, they now command high prices.

8. Like all change, this development has downsides as well as upsides. It has provided existing crofters with valuable assets in the shape of holdings that were previously of little worth. But it has also made it hard for aspiring crofters – especially younger Highlands and Islands residents of modest means – to enter crofting. Hence the strong feelings engendered by the present Crofting Bill's failure to do anything about the fact that the crofting system (in existence only because an earlier set of market forces were fenced out of it) now has operating (inside the fence erected by previous crofting legislation) a new set of market forces which, by some people's reckoning, could be every bit as destructive of crofting as the market-derived threats eliminated in 1886.

9. Despite this problem, to which I'll return, the fact that the wider Highlands and Islands economy is now more buoyant than at any time since crofting took shape, and the fact that so many people now want to get into crofting, have got to be seen as tremendous opportunities in a crofting context.

10. Equally significant in this context is the extent to which wider Scottish, UK and EU policy frameworks have altered of late in crofting's favour. In the 1950s and 1960s, policy was concerned with boosting agricultural output – hence the period's subsidy-backed drive for larger farms, increased mechanisation, etc. In this climate, crofting had little to offer – and looked, in

fact, to be badly out of date. Today, in contrast, rural policy, in Scotland and more generally, aims: (a) to create highly diversified rural economies supporting worthwhile populations; and (b) to foster environmentally attractive landscapes. In this new era, crofting or something like it has a huge amount to offer – not just in existing crofting areas but in the many other localities, inside and outside the Highlands and Islands, where hill-farming is failing and where alternatives like plantation forestry cannot, in the crofting manner, provide a countryside which is simultaneously thickly-populated and highly-appealing.

11. Given both the marked upturn in Highlands and Islands economic prospects and the way in which the wider policy setting has shifted in crofting's direction, the case for crofting has never been stronger than at present. This is recognised by Scottish Executive ministers. In statement after statement, Rhona Brankin, in particular, has committed the Executive to a policy stance more favourable to crofting than that adopted by any government of Scotland since the 1920s. As regards the Crofting Bill, much the most striking evidence of its pro-crofting credentials is to be found in the Bill's provisions concerning the creation of new crofts on land not presently under crofting tenure. This is a dramatic departure from previous policy and one which, or so I've long argued, has the capacity to create all sorts of developmental opportunities. These opportunities are now all the greater because of: the possibilities opened up by the community ownership provisions of the Land Reform Act; the availability of finance from sources such as the Land Fund; and, not least, the growing willingness of landowning public agencies, notably the Forestry Commission, to make land available to prospective crofters or smallholders.

12. It's mainly because of its commitment to croft creation that I welcome the Crofting Bill. Might the Bill be even better if it enabled decisive intervention in the market which has developed, as described in Para 8 above, in crofts? Arguably yes – but such intervention, if it's effectively to add to the supply of crofts available to new entrants to crofting, will require to be radical.

13. In this connection, it should be understood that the fact of money being involved in the acquisition of a croft is not new. Indeed, it's a consequence of a crofting right (*free sale* in the terminology of nineteenth-century reformers) enshrined in past legislation. In effect, this legislation turned croft tenancies into properties which can be traded by means of the process known as assignation. They have been so traded for a long time. What's altered recently, because of the economic upturn described in Para 7 above, is the *value* of crofts. Rather like rural homes, they now fetch prices so steep as to preclude their acquisition by whole categories of rural residents.

14. In principle, it would certainly be possible to take legislative steps to reduce those prices. However, this would not be painless. It would entail a reduction in the longstanding rights of crofters. It would also leave outgoing crofters (by no means all of them wealthy speculators) worse off financially.

15. There is a further point. Since the number of crofts, whether tenanted or owner-occupied, which are traded in the market – as opposed to being

assigned to another member of an outgoing or deceased crofter's family – is small, market intervention would not add greatly to the supply of affordable crofts. What would add substantially and immediately to the supply of such crofts would be a legislative redefinition of the term *crofter*. This redefinition would have the aim of making the term mean what it meant when the Crofters Act of 1886 was framed – a crofter then being someone whose principal home was assumed to be on his or her single croft.

16. Most people probably believe that a crofter is still such a person. But this leaves out of account two creations of the twentieth century – the absentee crofter and the multiple occupier (or collector) of crofts.

17. In the Western Isles alone, there are some 700 absentee crofters. And since absentees are defined as people living more than ten miles from their crofts, the number of Western Isles crofters whose principal home is not on their croft is considerably greater than this. The Crofters Commission is empowered to – and does – act against absentees. But the procedures involved are complex, time-consuming and expensive. Hence the attraction of simply once again defining a crofter – whether a tenant or a so-called proper occupier of an owner-occupied holding – as someone whose principal home is on his or her croft. At no taxpayer cost, thousands of crofts across the crofting area would thus become technically vacant and available for relet to new entrants of the type so frequently excluded from crofting by the cost of crofts.

18. Many of these newly vacant crofts would be made available by the legislative redefinition of *crofter* resulting not just in the entire elimination of absenteeism but also in each multiple occupier of crofts – and some crofters occupy five, ten, 15 or more holdings – being deprived of all but one croft or (if this were thought too cataclysmic) all but two or three crofts.

19. The policy justification for such measures is clear. If the key objective of crofting legislation (as everyone agrees) is to sustain a tenurial system which fosters as high as possible a rural population, and if there is (as everyone also agrees) an unsatisfied demand for crofts, then there should be removed from the crofting system those features (not present when the system was first put in place legislatively) which run counter to the population-sustaining objective – such as absenteeism and multiple occupancy.

20. But since all such action – whether controlling the market in crofts or removing absenteeism and multiple occupancy – would result in a drastic alteration in the crofting status quo, the present, or any future, Scottish Executive would require, in my view, a democratic mandate for the necessary legislation.

21. Hence my suggestion as to how this committee deal with concern – made manifest by reaction to the Crofting Bill – about the obstacles now in the way of prospective entrants to crofting. The committee should request the Scottish Executive to instruct the Crofters Commission to report in detail by 31 December this year on the implications of: (a) decisive legislative intervention

in the market for crofts; and (b) the legislative removal from crofting of both absenteeism and multiple occupancy.

22. This would enable candidates in crofting constituencies in next year's Scottish parliamentary elections to make clear in their election addresses, and political parties to make clear in their manifestoes, where exactly they stand on these issues. This, in turn, would provide the incoming Scottish Executive of May 2007 with a democratic mandate for action or inaction, as the case may be, in respect of them.

23. What this committee should not do, in my opinion, is damage the chances of the present Bill becoming law – thus jeopardising gains, especially those involving the creation of new crofts, which I consider to be of great significance.

SUBMISSION FROM SCOTTISH CROFTING FOUNDATION

The SCF have extensively researched crofter opinion on the Draft Crofting Reform Bill and submitted a comprehensive response to the SE consultation in June 2005. Further SCF consultation shows this response to still be valid and it forms the basis of our written evidence to the ERDC.

A summary of points raised by our area representatives in December 2005 has also been sent to the ERDC.

The following summarise crofters' foremost thoughts on the Crofting Bill as introduced to Parliament in March 2006, so far, given that the Bill is actually only a list of amendments and that it is incomplete.

In summary, there are some aspects to the Bill that have the potential to improve the Crofting (Scotland) Act 1993. However, on balance the positive aspects are overshadowed by fundamental negative facets that cause many to feel that this Bill will have a detrimental effect on crofting. The process that has led to this point has been seriously flawed and has led to a weak Bill being introduced, and to great deal of resentment amongst crofters. The following points are perhaps the most significant.

- **Research and evaluation** –The SCF, and many individuals and other organisations, have asked for a full evaluation of crofting and research into options available to develop crofting. This has not been done and as a consequence the Bill still reflects a lack of comprehensive planning methodology, practicality and informed vision. The Policy Memorandum contains encouraging vision but the Bill does not translate this into practical, enabling legislation;
- **Consultation** - The draft Bill demonstrated a very “top-down” approach to rural development and caused a reaction against it from a wide range of individuals and organisations. The Bill, as introduced, still does not reflect the SE consultation. For example, after extensive research the SCF submitted a response that contained 23 suggestions for improvement of the draft Bill – these have been largely ignored. The consultation analysis also did not reflect what was actually brought out in public meetings, therefore leaving the feeling that the SE is bulldozing this through;
- **Incomplete Bill** - It is unacceptable to present an incomplete Bill and ask for comment on it. The proposed section on “Proper Occupier” is a missing fundamental element that will change the wider principles of the Bill and it is anticipated will lead to many changes throughout the Bill. The idea of “Croft Occupier” or “Registered Occupier” has been around since at least 1998 and was brought up again in our response in June 2005 – there is therefore no excuse to be suggesting it as an amendment at Stage 2;

- **Crofters Commission** - The suggested changes to the Crofters Commission and the way in which it regulates crofting diminishes its democracy, integrity and competence. The CC is being given more powers but there is no apparent increase in duty or accountability. It is unacceptable to suggest that the Commission board will have no elected members, that its members need no knowledge of crofting, that the elected Assessor system will be replaced by *appointed* local panels and that grazings committees will be given increased power but with no increased duty, accountability or democracy. Given the general move within development towards improved democracy, community representation and accountability, this Bill stands out as anachronistic, regressive and non-aligned;
- **Planning** - The problems with planning and the question of legislation dominance and protection of croft land still has not been resolved (Taynuilt will happen again). The concept of croft land protection and statutory planning consultation needs to be in both this Bill and the T & C planning Bill;
- **Valuation** – it is suggested that the “proper Occupier” concept will help to moderate speculation of croft land. This may be so, but it is impossible to assess its worth when it is not in the Bill. This Bill also introduces the idea of valuation being based on a “free market”, something contra to the principle of a protected system. Other issues around valuation of croft land as estate still propagate the notion that croft land has a free market value, and would increase cost to the legatee;
- **Interposed leases** - The issue of Interposed Leases does not appear to have been addressed as proposed; what happened to the test case and the potential protection of crofters’ rights in this Bill? It is now suggesting an amendment to the Land Reform (Scotland) Act, something that was initially dismissed and could take years to accomplish;
- **Scottish land reform** - This Bill does not reflect the spirit of the Scottish land reform, from which it was spawned, which was to sustain population, strengthen communities and widen economic opportunities in the Highlands and Islands, and other peripheral regions of Scotland. In fact much of what was discussed in the early stages of the reform still have validity but no presence in the Bill;
- **Increased costs to crofters** - Whilst a full analysis of the Bill in light of the Financial Memorandum has not yet been undertaken, the increase in cost outlined in the FM do not appear to be accurate or complete.

In conclusion, the overall feeling is of disappointment. This is a great opportunity to demonstrate the Scottish Executive’s commitment to crofting and to modernise legislation to advance the development and expansion of crofting. Crofting has huge potential and could be leading rural development and the changes being imposed by the various related reforms. The process used to develop the Bill and the resultant weaknesses of the Bill do not measure up to this.

However, it is recognised that amendments to the 1993 Act are needed and it is hoped that the Scottish Executive will take the eleventh-hour opportunity to listen to the suggestions being made and that appropriate amendments can redress the inadequacies.

SSI DESIGNATION FORM

SSI Title & No:	The Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006, (SSI 2006/156)						
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 & Rural Development		Other Committee				
Purpose of Instrument	The purpose of instrument is to implement European Commission measures taken to protect the EC from the spread of the Highly Pathogenic Avian Influenza Virus H5N1 by banning the import from all non-EC countries of unprocessed feathers.						

Laid Date	16 th March 2006	40 day date	11 th May 2006
1st SLC Meeting	28 th March 2006	20 day date	22 nd April 2006
Lead Committee Report Due	8 th May 2006	Other Committee Report Due	

SE Contact	John Peerless, ext. 46555
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule	✓	PO Letter dated	16 th March 2006	PO Letter received	✓
Revocations	Revokes	See Purpose of Instrument		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								

SUBMISSION FROM NFU SCOTLAND

NFU Scotland responded to the consultation on the Draft Crofting (Scotland) Bill last year. Our views are summarised again below for ease of reference.

More generally NFU Scotland strongly believes that a healthy agriculture industry is central to thriving rural communities and economies. Crofting is a significant and crucial part of the agricultural sector – indeed in some areas it represents the vast majority of the sector. We therefore believe that it is vitally important to retain active crofting communities, contributing to the agriculture sector and the upstream and downstream industries that depend on it. In addition, crofting plays a hugely important role in retaining viable populations in many of the remotest and most fragile areas of Scotland. Crofting is also well placed to deliver the wider, non-market environmental, social and economic benefits that society expects from land managers. However, the core agricultural activity of crofters must be viable and profitable if they are to be in a position to deliver these benefits. The Crofting Reform Bill must therefore properly address the important issues facing crofting in the 21st Century.

For crofting to flourish it will be important to achieve a sensible balance between regulation and individual initiative and entrepreneurship. The unique system of crofting tenure needs to have adequate regulatory protection to address specific problems, for example, absenteeism. On the other hand, at a time when CAP Reform aims to reduce administration and bureaucracy, every attempt should be made to simplify routine processes such as decrofting of single house sites. If the correct balance is achieved, crofters will be able to develop their agricultural businesses while at the same time maximising diversification opportunities and delivering wider benefits.

Summary of NFU Scotland views on the specific issues in the draft bill:

- NFUS is extremely concerned at the proposal that the principal use of crofts need no longer be agriculture. Given the increasing importance of agriculture as a part of wider rural development, as recognised in the Scottish Executive's revised Strategy for Scottish Agriculture, it is vital that this link is maintained and that agriculture remains central to crofting.
- We feel it is premature to comment on any extension to the crofting counties as we feel the full implications and the process of becoming a croft need to be fully investigated and clarified.
- NFUS agreed that after 20 years a croft boundary, which had locally become the accepted boundary, should be adopted as the legal boundary.

- We supported the extension of tenanted rights in a common grazing, runrig land and apportionment to be included in the Register of Crofts.
- We agreed that energy should be considered a reasonable purpose for the resumption of land.
- If a crofters share of development value is to be paid in instalments, then these instalments should be made to the croft rather than the croft tenant.
- The Crofters Commission should be permitted to provide apportionments for a fixed period and that they are subject to review from time to time and that they conditions applicable to the apportionment can be varied by the Crofters Commission on the request of the grazing committee, owner or crofter.
- Land that has been registered as, and treated as, croft land for more than 20 years should be beyond dispute.
- Crofting tenancies must be held by individuals and that a croft tenant should not be able to form a limited company to hold the tenancy of his croft.
- A crofter should be able to apply to the Land Court to direct the landlord to provide vehicular access route to their croft, however this must be done in consultation with other crofters if the new route will take access over their croft land.