



Environment and Rural Development Committee

13th Meeting, 2006

Monday 24 April 2006

The Committee will meet at 2.00 pm in the Comhairle nan Eilean Siar Chamber, Council Buildings, Stornoway, Isle of Lewis.

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

Panel 1

Neil Macleod, Director and Steve McCombe, Harris Area Representative, Scottish Crofting Foundation;
Kevin Kennedy, crofter, South Lochs;
Simon Fraser, Solicitor, Anderson MacArthur & Co., Stornoway;

Panel 2

Iain Maciver, Factor, Stornoway Trust;
Morris Black, Company Secretary, Pairc Trust;
Angus Macmillan, Chairman, South Uist Community Company;

Panel 3

Duncan MacPherson, Community Co-ordinator, South Lewis & Harris Rural Community Housing Pilot Group;
Angus Lamont, Director, Hebridean Housing Partnership;

Panel 4

Murdo Mackay, Economic Development Officer, Crofting & Land Resources, Comhairle nan Eilean Siar;
Donnie Macaulay, Chief Executive, Western Isles Enterprise; and
John Price, Development Director, Lewis Wind Power Limited.

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

The following papers are attached:

<u>Agenda Item 1</u>	
Briefing Paper [<i>Members only</i>]	ERD/S2/06/13/1a
Submission from Neil Macleod, Scottish Crofting Foundation	ERD/S2/06/13/1b
Submission from Kevin Kennedy, South Lochs area crofter	ERD/S2/06/13/1c
Submission from Simon Fraser, Anderson MacArthur & Co.	ERD/S2/06/13/1d
Submission from Stornoway Trust	ERD/S2/06/13/1e
Submission from Pairc Trust	ERD/S2/06/13/1g
Submission from South Uist Community Company	ERD/S2/06/13/1h
Submission from South Lewis & Harris Rural Community Housing Pilot Group	ERD/S2/06/13/1i
Submission from Hebridean Housing Partnership	ERD/S2/06/13/1j
Submission from Comhairle nan Eilean Siar	ERD/S2/06/13/1k
Submission from Highlands & Islands Enterprise Network	ERD/S2/06/13/1l
Submission from Lewis Wind Power Limited	ERD/S2/06/13/1m

Agenda Item 1

**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/1b

SUBMISSION FROM NEIL MACLEOD

A POTTED HISTORY

I am sixty years of age, a fluent Gaelic speaker and have been involved in crofting for most of my life except for some years spent on the mainland in furtherance of an engineering apprenticeship. I was about forty before I was able to buy a croft of my own so I am well placed to understand the frustrations of young people who are unable to secure crofts.

I have been co-owner of a medium sized engineering company for about 35 years. This gives me a degree of latitude to pursue my crofting interest and alleviate the dependence on crofting as a livelihood. The croft of which I am tenant is only 5 acres but with sub-tenancies and seasonal lets I am able to run two pedigree sheep flocks, North Country Cheviot & Blackface. I am a member of a sire reference scheme where all my stock is recorded from birth and given a subsequent estimated breed value (E.B.V.), and also a test for scrapie. My staple market is the sale of rams and female stock, selling in the Southern Isles, at Stirling, Dingwall and Dalmally, as well as locally. I am Chairman of the Lewis & Harris Sheep Breeders Association which was formed about seven years ago and has approximately 150 members. We sell lamb to the local supermarket, and are in process of setting up a website for the internet selling of branded local lamb. We offer pregnancy scanning of ewes, training and have undertaken a number of innovative initiatives that benefit our members.

Being passionate about all things crofting, my various other involvements are, Vice Chairman of the Scottish Crofting Foundation, Executive Director of Lewis Crofters Ltd, Director of Long Island Auction Mart, Director Long Island Rural Trust as well as being a member of various other committees. I have done two terms as a Grazings Clerk and been a Crofters Commission Assessor for over twenty years. In the show season I regularly compete and am often asked to judge. On my last foray to The Royal Highland Show I came first in the two shear Cheviot category. I have won the Blackface section in the H.I.S.S. for the past two years.

It is my fervent belief that given the right circumstances there is a vibrant future in crofting. The new Bill must ensure the conditions are just and equitable to allow crofting to flourish and prevent an exodus from our community, and I offer the

following comments for consideration by the Environment and Rural Development Committee.

USE OF CROFTS

Anything that brings about genuine, productive use of crofts is welcome. At the moment genuine crofters are losing out and I am very much in favour of terminating tenancies in cases of neglect, dereliction and misuse. We need to ensure that the priceless asset of our land is put to good use, but at the moment we lack a definition of what the Bill means by 'purposeful use'. For example a tenant or owner-occupier of a croft might argue that neglect equates to nature conservation, whereas the absence of grazing or cultivation is in fact destructive of wildlife habitats. The Crofters Commission has an absentee initiative in certain areas, but this is no guarantee at present that crofts will actually be brought into use. It is quite possible, and has happened, that one absentee may assign the croft to another. The Bill promises us stronger and effective regulation, and this will be very welcome, provided the Commission is given adequate powers and is obliged to use them. The 'proper occupier' is an interesting concept but I am disappointed that it has not been developed at this stage of the Bill.

ROLE OF THE CROFTERS COMMISSION

Reinforcement of the Crofters Commission's regulatory powers would be of great benefit but would run against the recent trend whereby the Commission has shifted its emphasis from regulation to development. This loosening of the regulatory regime has allowed grossly inflated prices for croft tenancies and freeholds and, paradoxically, an increase in absenteeism, dereliction and abandonment of crofts. There must be an obligation on the Commission to act in such circumstances. The Bill states that the consent of the landlord would be required to challenge neglect. I can see no reason why the landlord should be involved here. A landlord could use this as a get-out to avoid reletting where there is a demand for crofts.

The regulatory role of the Commission must be paramount. In recent years the Commission has abdicated its regulatory function. This abdication resulted in, for example, the infamous Taynuilt case. At a more grass-roots level, the post of Grazings Officer has been abolished. This was a highly experienced and respected official who would sort out local disputes over such things as grazings regulations and straying livestock without legal formality and resultant expense. These days such problems have to be referred to the Land Court or to the Sheriff, which most crofters find intimidating, not least on grounds of cost.

DEMOCRACY AND THE COMMISSION

As at present constituted, the elected Panel of Assessors is supposed to be the eyes and ears of the Commission in crofting communities. In recent years the

Assessors have been scandalously under-employed by the Commission. Now it is proposed that the ***elected*** Assessors be replaced by ***appointed*** local panels. How can this reversal of democratic principles be justified? Crofters would wish to see the elected Panel of Assessors retained, perhaps with some amalgamation of areas, and with an increased advisory role. There is a need, too, for democracy within the Commission itself, with the Board being elected by crofters. The proposal in the Bill that Commission staff may act in place of the Board is a further negation of democratic principles and must not be allowed to proceed.

DEVELOPMENT ON CROFTING LAND

Resumption of common grazing land for development purposes should be subject to the will of the majority of shareholders in the grazing. Crofters can have a role in provision of affordable housing in their communities, but there should be a presumption against housing development on inbye land. In such cases consent to decroft should have precedence over planning consent.

Agenda Item 1
**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/1c

SUBMISSION FROM KEVIN KENNEDY

I am a young crofter with a young family.

I took over two bareland crofts in Lemreway, South Lochs, Isle of Lewis in September 2004 by family assignation, with the assistance of the Croft Entrant Scheme. The crofts were unfenced and unimproved. I applied for Rural Stewardship Scheme in March 2005 and am still waiting for a decision at the time of writing. At the same time I applied for Single Farm Payment Entitlements from the National Reserve but was turned down. I finished fencing one croft in October 2005 and bought two cows in November, the first of which calved in February. I applied to construct an agricultural building in March this year, and a 2.2ha Forestry Grant Scheme has been work completed.

I run 60-70 ewes. The male lambs go mainly for store, but I intend to sow an area of turnips this year for lamb finishing. I also intend to join a quality assurance scheme. Ewes with female lambs go back to the hill to give the lambs a chance to heft.

There are 33 crofts in the township and I am one of two young crofters. There is a problem of remoteness and aging population. Most of the local young people have left. The age profile makes it difficult to carry out township improvements. We put forward proposals for Rural Stewardship and forestry schemes but could not get agreement. We need a means of letting individual crofters or groups of crofters carry out improvements without the agreement of the whole township.

The main problem for young aspiring crofters is availability of crofts, if they cannot get a family assignation. There are plenty of unused crofts but, if and when they come on the open market, they are priced beyond the means of local young people. Together with the very high cost of building in the island, this makes it very difficult for young people to get into crofting. The Croft Entrant Scheme has been a great help, but would be of very little assistance to someone competing for a croft on the free market. Creation of new crofts will obviously help. We could also do with easier access to the National Reserve of Single Farm Payments for new entrants.

Cash flow is a problem here also. My agricultural building is costing £25000. The Crofting Counties Agricultural Grants Scheme can take three months to pay out during which time I have to borrow from the bank. The need to invest in the croft has to be balanced with the needs of the family. I hope to have the crofts running self sustained within the next 18 months, with all debts paid, then begin land improvement and stock improvements.

I think crofting has a great future, but we need to find ways of getting more young people involved.

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**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/1d

SUBMISSION FROM SIMON FRASER

Others have doubtless commented on many other issues and I do not wish to trouble the Committee with repetition of such points. I will confine myself to a few practical comments.

1. The Bill is from the point of view of a crofting lawyer generally to be welcomed, and contains some useful measures.
2. The enhanced role of the Commission is to be welcomed but the effectiveness of this will depend entirely on the new Commission being prepared to be strongly proactive in the discharge of its administrative functions if it is to ensure that thereby it 'best contributes to the achievement of sustainable development of crofting.....' S 1A (2) (b).
3. S 23 creating as it does a new power to enable the Land Court to grant a new right of access to a croft is very helpful. Subsection 2 (d) seems to envisage that the land over which the right is to be granted could be part of another croft or common grazings. This is helpful as far as it goes, but it would be probably be better if it were made clear that the access right can indeed be granted over other croft land. Most access disputes are not between crofter and landlord but between individual crofters. The opportunity for a crofter to gain access to a landlocked croft could be frustrated if an intervening croft were to be purchased by a neighbour. This could be overcome if the definition of the land over which the access could be granted were extended to include land 'part of a croft formerly in the ownership of the landlord or his predecessors in title.'
4. S35 amending the Land Reform Act is expected. It does not cover the situation however where (as is likely to be the general case) the land has been bought by agreement albeit with the knowledge of the Act in the background. Further the measure could conceivably act as a deterrent to development on common grazing land where a developer might require to secure a right over that land in advance of expending large resources on working up detailed proposals.

I will of course be happy to answer any other points the Committee may wish to put.

SUBMISSION FROM THE STORNOWAY TRUST

While the Stornoway Trust acknowledged the need for a review of the Crofting Reform Acts and supported calls for legislative change now deemed necessary to address the needs of a unique and valuable form of land tenure it has not been possible to call on the collective input of Trustees within the response period.

This submission therefore reflects my own thoughts on various aspects of the Bill and in particular my concerns based largely on my experiences with the Trust, the Scottish Crofters Union, as grazings clerk and croft tenant.

I am sure that others will have ably articulated the positive attributes of crofting and assume that the proposal to form new crofts beyond the Crofting Counties is recognition of the benefits which have rightly been attributed to the crofting system.

I am however somewhat concerned that the proposal is open ended given the recent changes to the Crofting Counties Agricultural Grant Scheme, the financial constraints of the Crofters Building Grants Scheme and how the inclusion of grant chasers may influence the wider public's perception of crofting. It is also worrying that the door is being opened to allow the expansion of a system, the regulation of which as things currently stand, appears to be the subject of heated debate and future uncertainty.

In common with most crofters I, to my shame, have not been able to actively consider or participate in an issue that is of such huge importance to crofting and without possession of any legal training this submission hopefully reflects my layman's understanding of a hugely complicated and legalistic minefield.

Arguably a major flaw in previous legislation was its complex nature, all too open to very varied and imaginative interpretation, and I fear that the Bill has continued down this route, as the 242 paragraphs of guidance notes and supporting documents, helpful as they may be, suggests.

In my view crofting needs a clear set of rules and regulations, firmly and consistently applied for the benefit of a system with its set of values preserved.

To that end crofting needs a strong effective and credible Crofters Commission which, through its actions, gains the respect and confidence of crofters and the wider crofting communities.

Crofters Commission

While the Bill proposes major changes to the make up and functions of the Commission, the devolvement of power through the introduction of local panels, and a perceived lack of ownership amongst the crofting interests, may hinder any aspiration of attaining the status the Scottish Land Court will hopefully continue to enjoy, particularly if its own rule book can be revised to effectively address any attempts to undermine or abuse the privileges a croft tenancy confers.

Amongst many of the positive elements of the Bill is the introduction of local policy provision. A worthwhile concept which needs clearer definition. Will the local panels have powers to prevent, say, owner occupancy or will they merely decide on the dates of fanks or local dipping?

Temporary Resumption

This is a hugely positive step forward allowing crofters to benefit from development over time with land reverting back to crofting continuing to be an option.

Making section 5.3 agreements binding on successors removes the need for further erosion of croft land

Open Market Value

Considerable concerns have been expressed in relation to the inflated prices now attached to croft tenancies. While the Commission have stated that they do not have the power to stop it, a reasonable obstacle in the form of a, say, 10-year probationary period could act as a disincentive for land speculation.

An incoming tenant, instead of securing a professional produced development plan could be asked to present his proposals to a local panel who would have the power to vet the applicants' suitability. The applicant's performance could be monitored during his probationary period and given that circumstances can genuinely force change, a local panel could look sympathetically or otherwise at a person's performance.

A genuine applicant keen on participating in crofting would have nothing to fear and any person falling short of the mark would not have his tenancy confirmed. The threat of losing an inflated cash sum would focus one's thinking before outbidding worthy local interest.

Mapping

The drive to create a fully mapped croft register could have huge financial implications on crofters and landowners alike. While the aims is commendable consideration should be given to provide financial incentives for parties to participate in a mapping exercise.

Grazings Committees

By statute it is incumbent on grazings committees to maintain the common grazings, fences, drainage, etc. The proposals to introduce an obligation to notify all shareholders of ongoing maintenance works seems wholly unnecessary and adds scope for those set on creating nuisance to further hinder works of grazings committees.

Leases

I assumed like others that the Bill would effectively deal with Interposed Leases but the proposals as drafted may be misleading.

A community landowner's right to buy leases can sterilize development within the crofting areas, if that right extends beyond an Interposed Lease.

With regard to the Interposed Lease issue, I do not understand how any such action can impinge on the statutory rights of crofters, neither do I see the benefit of an Interposed Lease if having removed an asset, the Landlord reduces the value of his estate.

Section 20 of the Crofters (Scotland) Act 1993 states that for a reasonable purpose, the Land Court may authorise the resumption of land, if it is deemed to be for the good of the croft or the estate (landowner) or in the public interest. A Court dealing with an unwilling landowner forced through the terms of his predecessor's lease to apply for resumption, could effectively stop a development on the grounds that the application will neither benefit the landlord nor the wider public interest.

The proposal to buy back a lease at full market value would not be necessary as the value of a potentially worthless manoeuvre on the outgoing landlord's part would arguably be nil.

Owner Occupancy

The right to buy community owned croft land at 15 times the annual rent is at odds with the drive towards a free market promoted through the Bill. Using the right to buy to avoid regulation should not be an option.

Gaelic

The stipulation that at least one Commissioner must be a Gaelic speaker is welcomed but given the status afforded to Gaelic, why not a majority, the Chairman or the Chief Executive.

The strengthening of the language has been identified as a key objective of the reforms.

SUBMISSION FROM THE PAIRC TRUST

**THE EFFECT OF INTERPOSED LEASES ON THE COMMUNITY OF PAIRC'S
APPLICATION FOR THE RIGHT TO BUY THE ESTATE USING THE LAND
REFORM (SCOTLAND) ACT 2003**

Introduction:

The Pairc Trust was formed as a democratic organisation as per the requirements of the Land Reform Act and with charitable status in 2004 to facilitate the process of applying to the Scottish Executive for the Community Right To Buy its Crofting Estate, following a failure in negotiations to buy the Estate from its owners.

From the outset the Landlord - Pairc Crofters Ltd was hostile to the Application and would not enter into negotiations to amicably settle a sale to the community. There had been widespread claims that land owners had identified a legal loop hole within the Land Reform Act to place legal devices in place designed to ensure that in the event of acquisition of land, by the use of the crofting community right to buy, the potential development value is effectively retained in the hands of the current owner of the land.

This necessitated the Trust to have to submit its application to the Scottish Executive using the Part 3 method. Due to the subsequent complexities of mapping of the estate by the Trust as required by the Land Reform Act. It was not feasible within the time scale and the community decided to proceed with an initial application to purchase the Estate Common Grazings excluding the Township inbye, the area of Stiomrabhaigh and some islands.

The Community is committed to a second stage in completing the Estate purchase by either negotiating the sale of the remainder or if necessary a second and subsequent application for the Right To Buy using again the Part 3 method of the Land Reform Act.

Following an overwhelmingly positive ballot held in the community in November 2004 the Trust declared its intention to make application to the Scottish Executive for the Right to Buy.

Interposed Leases:

Realising that the community was determined to proceed with its intention to use the Land Reform Act to apply for the Right To Buy the Principal Director of Pairc Crofters Ltd actively prepared a defensive plan. It was clear that Pairc Crofters Ltd could not secure the development rights to the estate without creating or involving a subsidiary company.

Pairc Crofters Ltd (PCL) created a new limited company Pairc Renewables Ltd (PRL) to whom they granted a lease over the whole estate. By granting such a lease the community of Pairc effectively became the subject of two land lords. PRL then entered into and agreed a subsequent lease with Scottish and Southern Energy for the energy rights to the estate. This lease confirms that the Land Lord will prevent any forestry on the common grazings which is contrary to the Crofter/Forestry Act and will its self circumvent the proposed change in the Crofting Reform Bill where the land owner will not be permitted to stop forestry by crofters on the common land.

The Directors of PCL and PRL (being the same individual(s)), have a vested interest in these leases and have shown no interest in negotiating amicably the sale of the estate to the community. As the recent analysis by the Executive itself states "Firstly they (the leases) complicate the process of acquiring the land so that the crofting community right to buy is merely a first stage. So there is an element of deterrence and delay. In the context of Lewis where there are several major wind farm developments planned, including one on the Pairc estate, delay could increase the value of the property rights held. The potential development value of the Pairc property is bound to increase if the planned project for a wind farm at Pairc is granted planning permission. The difficulty with that is that the value could reach a level at which the crofting community body could not raise sufficient money to buy the property unless it was buying it subject to the wind farm development."

In the opinion of the Trust, these leases are deliberately constructed to circumvent the purposes of the Land Reform Act and to permit developers in the area to use crofting lands without consultation or community input.

The Pairc Trust submitted its application in May 2005. PCL/PRL had 3 months to reply and once these were received through SEERAD, the Trust submitted a Counter response in October 2005.

The matter of the Interposed Leases was drawn to the attention of the Executive before the Part 3 Application was lodged as the Trust considered it imperative that the Executive settled the matter of these leases before the Trust's application could receive proper consideration.

It had been suggested that it might be possible to argue that the provisions of section 23(3) of the Crofters (Scotland) Act 1993 prevent a landlord of croft land from entering into any kind of lease over croft land other than a croft tenancy. Following several meetings with MSPs' and various Agencies the Trust were pleased when the advice of an independent legal expert on Crofting Law was sought by Highland and Island Enterprise and following the advice received from Professor Paisley in early November 2005, the Executive decided to place the issue before the Land Court. .

The Trust was informed at that point that application would be made to the Land Court within weeks.

The Trust was informed in December 2005 that the matter would be addressed at the beginning of the New Year.

In January 2006 the Trust was informed the submission would be made in February.

In February the Trust was informed that in fact the submission was still with the Executives legal representatives.

As at today's date, the Executive has still to submit the query to the Land Court.

Recently Trust Directors wrote to the Minister for Environment and Rural Development as follows:

"You will appreciate that the process involved in a significant buyout of this nature requires massive commitment and support from the participating community. In Pairc we have been extremely successful in maintaining high levels of support, as evidenced most recently in formal Ballot results; but, while core levels are solid, perceptions that the current inactivity is because the LRA is not going to be able to deliver, are beginning to impact. Potential effects on community morale are thus significant.

The Land Reform Act is by any measure a flag-ship Policy for Scotland and it would be unfortunate if, now it is under intense scrutiny, it is not able to match the aspirations of communities like Pairc which were encouraged to regard it as a means of making an attainable step change in their circumstances, in a way which encouraged them that government was listening and aware of their difficulties.

It would clearly assist our efforts tremendously if we had an early decision on this matter or failing that a clear timetable for resolution."

The subsequent response received by the Trust gave no reason other than legal consultation for the delay, did not give a timetable for resolution and did not address the basic questions highlighted in the Trust's letter regarding confidence

or public perceptions. However it did state that Ministers did not wish the aims and ideals of the LRA to be thwarted. Enclosed with it was a reply to our local MSP Alasdair Morrison which, somewhat ominously in the Trust's opinion, highlighted the provisions in the Crofting Reform Bill as a potential solution to the case.

Effects on the Community:

PRL is effectively a secondary Land Lord of the Estate.

All the leases are transferable and therefore defacto the Land Lordship of the estate itself becomes Transferable.

The failure of the Executive to take some sort of action, despite the fact that Ministers have already made a commitment to act on the Pairc arrangements; or to timeously respond to the well signposted issue of Interposed leases has had a marked and adverse effect on the morale of the community.

There is a general feeling of lack of confidence in the flag ship Land Reform Act 2003.

Adverse decisions regarding the common grazings of the estate are being made contrary to Crofting legislation by the land lord and his associated companies.

The proposed resumption process as laid out in the Crofting Reform Bill negates a one off payment eligible by developers to individual crofters. This raises the question as to whether or not the Act is more biased towards the Land Owner rather than the indigenous Crofting Community.

The community is being thwarted in its desire to buy the whole of the estate by the apparent failure of Part 3 of the Act.

That the Trust has much reduced funding as a direct result of the stalemate created by the Executive in procrastination over the Land Court issue.

The practical effect of interposed leases on crofter rights is that crofters are now subject to an additional layer of planning constraint. For instance in the Pairc situation the "end user lessee" is a developer with a specific interest which prohibits various crofter development options e.g. forestry or any activity which they perceive as prejudicial to their interests. This means that established crofter rights are eroded by the simple mechanism of an interposed lease. If that is correct the question has to be - why has this device not been employed before?

At present the Executive and its experts are hung by a landlord initiative which in the Trust's opinion has been prompted by the possibility of a Part 3 Application

under the LRA 2003. It is our opinion that this action should be regarded as a means of averting the provisions of that Act and dealt with accordingly.

The Crofting Reform Bill indicates that the community(s) will have the right to purchase leases upon individual estates. The consequences of this could be that Interposed Leases will therefore be deemed as competent and legal. A community such as Pairc - where it would have expected to purchase its estate for an agricultural price of around £250K as indicated by professional valuations received by the Trust, would now expect an inflated price - given a proposed £750Million project, and expect a 6 figure valuation put upon the purchase of these leases. Possible funding sources therefore which might have produced 94% of the cost of an agricultural purchase would simply not be available for such a massive expenditure.

Agenda Item 1

**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/1h

SUBMISSION FROM SOUTH UIST COMMUNITY COMPANY

1. Introduction

I welcome this opportunity to respond as chairman of the Community Company, hoping to purchase South Uist Estate for the benefit of the community living within its boundaries. The various feasibility studies, business plans and applications for funding have all demonstrated that this constitutes an unparalleled opportunity to address the multiply and chronic results of rural deprivation. We have demonstrated that economic, social and environmental benefit will ensue from the community purchase of South Uist Estate and will address the following:

- Rural population decline
- Increase GDP in the estate area and beyond.
- Add value to existing production
- Use the natural resources of the estate to the benefit of the people who live in these Islands – absolutely key
- In the long term this will allow us as the Islanders to be financially independent and will allow us to be removed from the culture of short term “revenue fixes” from public bodies
- Make the best use of public money and achieve the best return on investment on public money, through empowering the people to make investment decisions for which they will be accountable for, and which will generate revenue in the long term. The biggest barrier to economic development in the Islands is the lack of “own contribution” and empowerment makes it all possible.

2. Community Company

a. Background

- History: The development of a crofting community.
 - - First time since clan system abolished that the people have the opportunity to own the land on which they live.
 - 1886 Napier Commission & Crofting Acts
 - Breakdown of farms in early 1900`s. South Uist is 93% croft land
- Land Reform Legislation -2003
- Feasibility Study & Business Plan

- Poll of Community – 70% voted 70% in favour
- Formation of Community Company
 - Election of company directors – 17 names for 7 directors
 - Full members
 - Junior Membership
 - Associate Memberships
- A “friendly” buy-out
 - Present owners must be congratulated for taking this step.
- Negotiations – A team has been put into place.

b. Specific Projects delivered by Community Ownership

- Estate Management and sport – Revenue basis for benefit of community
- Re-instatement and upgrading of integrated drainage system and coastal protection
- Renewable Energy – Community owned small scale development
- Strategic Land Release – an opportunity to release land for commercial, private and public economic development
- Lochboisdale Port of Entry
- Rural Housing – specific to the needs of the South Uist area
- Tourism & Culture

c. Conclusion

- Community Ownership South Uist Estate – A unique opportunity
- Sustainable economic, social and environmental benefit – Best investment for public money in this area
- Company name – Storas Uibhist and Logo – Working Together
- Result expressed aspiration of community to take control of their own destiny.

In terms of the Land Reform Act, the above is all for nothing unless it is underpinned by regulations that will deliver on a number of key areas with regard to Crofting Bill. Given this unique opportunity for revitalising our community, of which 93% of the land is under crofting tenure, legislation contained in the new Crofting Bill must secure the development proposals for the Estate and not threaten or negate them. Consequently, on behalf of the Board of the Community Company I wish to make the following comments;

3. Purchase of Croft Tenancies.

The proposed system makes no provision for the acquisition of crofts for local people who want to be active in the crofting community. If the purpose of acquiring a croft is to build a house then provisions must be made for that separately from the use of the croft. At present there are 200 people on the housing waiting list. Housing needs and croft purchases must be separated to satisfy both the aspirations of individuals who require house sites and people who wish to be active crofters. In some cases they are the same but in the majority of cases they are not! Previously they have both been reviewed as one and the same. As a community landowner, we want to make house sites available to people who do not want to be involved in crofting, but wish to live in a crofting environment. That also releases land for more productive use by local indigenous people. Crofts should be assigned to incoming tenants in the form of a bond that will be relinquished in the case of an incoming tenant not adhering to the development plans and land management plans agreed at the outset.

4. Absenteeism

The Crofters Commission must effectively regulate and act in cases of absenteeism. At present there are 666 absentee croft tenants in the Western Isles, where there is a strong demand for tenancies. At present only 40 crofts per annum become available on the open market and supply and demand should reduce the market forces on price if more absentee crofts were available. It is absolutely essential that these crofts are re-assigned to local people who complete and adhere to development plans and land management plans, committing to a reasonable timescale (say 3-5 years). The ultimate sanction must be to lose the croft and the Crofters Commission must act with authority and timeously in this regard. It is also worth highlighting that in a "free market " situation it is likely that absentees who would cash in to the highest bidder in an unregulated market. This really would be worst of all worlds from a crofting perspective.

5. Short Term Tenancies

Short term sub-leases and unofficial sub-lets are the scourge of the crofting system. They simply allow people to retain crofts when they clearly have no intention of actively crofting in any form. It is totally unhelpful from the tenants perspective and more so for the incoming sub tenant. The incoming sub-tenant cannot invest in the long term and therefore the existing croft deteriorates from lack of upkeep in infrastructure and soil condition. I would recommend a minimum duration of 10 years, which would question the existing crofters wish to continue and also offer the incoming tenant a reasonable return on the investment on capital expenditure. Development plans and land management plans should be mandatory as part of this arrangement. Again proper regulation and action would be required from the Crofters Commission.

6. Summary

Finally, I would say that if community ownership is to be successful then this bill must address these fundamental deficiencies. In fact I would go further and say that if a free market on croft tenancies is allowed to continue and the Crofters Commission is not able to regulate effectively, then I feel the Land Reform Act will fail.

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**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/i

**SUBMISSION FROM (SOUTH LEWIS & HARRIS) RURAL COMMUNITY
HOUSING PILOT GROUP**

BACKGROUND TO THE RURAL COMMUNITY HOUSING PILOT GROUP

The Rural Community Housing Group ('the Group') is the driving force behind an innovative project, which aims to tackle the lack of affordable rural housing in the communities of southern Lewis and the Isle of Harris. The working group is community led, with representatives from Uig & Bernera Development Group and Lochs Initiative at the Edge (IatE), The North Harris Trust, Harris Development Ltd and the Erisort Trust. The membership also comprises representation from Tighean Innse Gall (agency representing Communities Scotland and the local housing associations), the Crofters Commission (CC), Western Isles Enterprise (WIE) and Comhairle nan Eilean Siar (CnES).

These communities came together on finding that they face similar challenges: the whole area can be classed as remote, peripheral and fragile both economically and socially, with continuing depopulation leading to an unbalanced demographic profile. In recent years there has been an increase in employment opportunities, but a limited housing supply, difficulties in obtaining land for building and increasing use of housing for holiday accommodation means that young, economically active people in these rural areas are finding it difficult to find suitable housing.

The communities have therefore acknowledged that tackling this lack of affordable housing is key to their long term sustainability, and identified that a coordinated approach to the issue was lacking: agency initiatives tended to be patchy and individuals and community groups could not identify one person/agency able to help them work to solve the multi-faceted problems.

To address this, the Rural Community Housing Pilot Group has successfully raised a £240,000 funding package, supported by Communities Scotland, CnES, WIE, the CC and the groups themselves, to establish an innovative pilot project which will ultimately deliver practical housing solutions appropriate to each community area, whilst developing a legacy of invaluable methodology and experience that will be made widely available for communities further afield to learn and benefit from.

COLLATED VIEWS ON THE CROFTING REFORM BILL FROM THE GROUP

The points noted below express the views of the Group's membership specifically relating to items within the Bill which will effect housing and housing provision. The Crofters Commission representatives on the Group have excluded themselves from this submission and its collation.

Considering initially the policy objectives of the Bill as set out in the **Policy Memorandum** the Group specifically notes support and synergy with the following objectives:

- ***Contributing a critical mass of population that sustains services*** – applicable across the entire area that the Group aims to address. We would cite a particular example in Clasmol, Harris where after highly protracted negotiations between the local grazing committee, individual crofters and the area housing association a small (5 unit) housing development was eventually realised. This created affordable housing for economically active individuals and families who were employed locally (aquaculture, land management), contributed to the community and assisted with the retention of the area primary school; the roll rising from 4 to 10 on completion of the project.
- ***Putting people who live locally at an advantage over holiday-home and second home buyers*** – any means to enable retention of people and create a balance demographic are welcomed.
- ***Sustaining community cohesion where it might otherwise collapse*** – land released for a social housing development at Drinshader in the late area of Bays of Harris and the associated addition to and balancing of population stimulated further community development including township landscaping, amenity provision etc.

The Policy Memorandum and other support documents, whilst lengthy did provide context and were useful.

Key issues raised in the Bill for which comments were sought, relevant to Housing:

- **The proposed status of the Crofters Commission** – no opposition to the changes proposed. However Group members sought that the existing, new or enhanced powers and activities that the Commission has are applied and that appropriate resources are made available to the Commission in this role. Members did acknowledge the need for balance between discretion and decisiveness on the part of the Commission depending on the situation e.g. assignments, absenteeism.
- **Provision for creating new crofts** – This is welcomed as a means of allowing more individuals to enter into crofting, and by increasing the supply address the market driven speculation in crofts. The ability to create new crofts is fundamentally a good thing as it automatically gives an opportunity to

allow the new tenant to build a house. Members welcomed the opportunity to create new crofts particularly given the increasing level of community land ownership within the Western Isles.

Members supported the proposal that new tenancies can be created without the right to buy or reassign as currently landowners will not create new crofts if they can simply be bought up straight away by tenants. This could be particularly important in allowing community landowners freedom to bring new people into crofting while also ensuring that the land remains in trust for all time for the benefit of the whole community.

It was proposed that a condition similar to the Rural Housing Burden legislation be considered within a tenancy agreement. RHBs come from the Title Conditions Act 2003, Section 43 - this is a way of putting a restriction on the title of a piece of land that will have a house built on it. If the house is offered for sale in the future then there is the option that the organisation that originally sold the land could buy it back as of right. Some landowners are on the RHB list maintained by the Scottish Exec including CnES, the North Harris Trust, and the Housing Associations based in the Western Isles. The Highlands Small Communities Housing Trust has utilised this legislation effectively, and Group note where this measure has been applied to de-crofted land. Member queries whether this mechanism could be applied to land in crofting tenure also?

- **Provisions specifying what crofts should be used for, and dealing with neglect etc.** – Members note that in future tenants and owner occupiers will simply be referred to as "occupiers". Enhanced powers to the Commission could reduce the number of absentee tenants and enable the Commission to impose a tenant on an absentee owner. This could increase the number of resident crofters and accordingly the number of houses in rural areas. This is in the context of the high rate of absenteeism in the Western Isles.
- **The role and powers of the Commission in overseeing how croft land is used** - In welcoming this proposal the Group noted that this would reflect the reality of multiple activities and means of income generating within crofting communities e.g. tourism activities, if they are to be sustainable without excessive loss of cultivatable land across communities.
- **The way in which the views of crofting communities are represented, through grazing committees, area based policies etc.** - The Group particularly welcomed the provision of local area policies as it may offer scope to address local housing needs with local solutions with cognisance of the local market, need, land availability, utilities etc.

Any means to better engage with grazing committees and effectively coordinate development are welcomed.

- **Changes to the regulation in crofts, including measures on assigning, dividing and subletting.** - Some Group members expressed concern that proposed legislation is not sufficient as it enables the selling of good quality croft land a great deal easier, arguably promoting speculation in the market place, and does little to preserve our culture and environment. Effective regulation is essential in addressing this.

The easing in the process for the subdivision of crofts with the landlord no longer having a veto is welcomed. This would allow one child of a crofter to share the croft with his/her sibling thereby allowing them both to build homes (and access housing grants)

Resumption will be made easier, which should make it easier to process housing projects desired by the local community.

Reverse resumption will allow land to be recrofted that has not been used for its planned purpose. This would stop people blocking development by decrofting a site, gaining planning permission and then never building a house. The land could be recrofted (if necessary) and then resumed for a more worthy person once more.

- **Proposals to allow the development of croft land for non-crofting uses.** Members note the opportunity for land in crofting tenure being used for other purposes. Some feel that crofters should not be persuaded to give up good cultivable land - this should be protected for future generations by a presumption against inappropriate and non land-based businesses. Others are more open to alternative developments, particularly housing, where these will secure a viable future for local communities.

Members note a greater opportunity for consultation with the Crofters Commission over planning applications for developments on croft land.

- **Changes to the crofting community right to buy (under the Land Reform Act) to allow any leases over the land also to be bought.** – Members note the need to validate these leases e.g. interposed leases.

In summary the Group seeks that any legislation retains a balance between the economic and social value of crofting and the ability of individuals and families who wish to reside, remain or return to living in these communities to access appropriate and affordable housing, without undue loss of good cultivable land, where other options exist.

April 2006

SUBMISSION FROM HEBRIDEAN HOUSING PARTNERSHIP

Hebridean Housing Partnership – Who are we?

- 1.1 The Hebridean Housing Partnership (HHP) was formed in 2002. HHP is an Industrial and Provident Society and has charitable status. The organisation was set up as a receiving landlord for the Comhairle's housing stock. There has been a Shadow Board in place since 2002 comprising 15 members including tenants, councillors and community representation. The Shadow Board has steered HHP through the difficult process which will lead within the next few months to the Comhairle transferring its 1850 houses to HHP.
- 1.2 HHP's initial Business Plan was published in May 2005 and it formed the basis for the Comhairle's transfer proposals which were the subject of statutory consultation with tenants. At the ballot of tenants held in October 2005 69% of the tenants voted "Yes" for transfer in a turnout of 66%.
- 1.3 HHP's core business will be the ownership and management of the housing stock transferred from the Comhairle. Communities Scotland is considering a business case for the 5 community based housing associations operating in the Western Isles to transfer their housing stock to HHP. The 5 RSLs which own about 300 houses are financially vulnerable and transfer will safeguard future investment in their tenants' homes. Committee members of the 5 RSLs will form the core membership of HHP's Area Committees.
- 1.4 Over and above management of the housing stock the Comhairle in its Local Housing Strategy has identified the need for a delivery vehicle to meet a number of its stated housing objectives. These include the development of new houses for affordable rent, market rent initiatives and delivery of Communities Scotland's grant regimes to encourage owner occupation for families who cannot afford to buy their own home. It should be noted that Communities Scotland's home ownership initiatives are to be welcomed, none have been as successful as the croft housing support schemes.
- 1.5 As a charitable organisation HHP is restricted in the ability to carry out some of these activities. By contrast the local housing agency Tighean Innse Gall (TIG) is not constrained and will work in partnership with HHP to complement its core landlord business. It is proposed therefore that HHP and TIG will enter into a "Group Structure" to formalise this partnership. Together the organisation will work to assist the Comhairle to achieve many of its housing objectives.

Demand for Social Housing in the Western Isles

- 2.1 At 19% of the housing stock, the Western Isles has one of the smallest social rented sections in Scotland. Without stock transfer and an injection of investment by Communities Scotland in affordable rented housing the sector would have continued to decline. Currently 50 houses per year are lost to the rented sector through Right To Buy. The small size of the social rented sector reflects the impact of croft housing. The Crofts Building Grant and Loan Scheme enabled large numbers of individual families to self-build rather than rent their home from the local authority.
- 2.2 There are currently 1047 families on the Comhairle's housing list whilst only 200 families are housed by the Comhairle on an annual basis. Demand is strongest in and around Stornoway however demand outstrips supply throughout the Islands. Without the support for crofters to build their own homes the waiting list figures would be considerably higher.
- 2.3 Pressure on the Comhairle to provide good affordable rented housing has increased markedly in recent years with the changes to homelessness legislation. There were 260 families presenting as homeless to the Comhairle during 2004/05.

Quality of Social Rented Housing Stock

- 3.1 To achieve the Scottish Housing Quality Standard by 2015 HHP will require to invest £21 million in the housing stock. The write off £38 million of debt on the Comhairle's Housing Revenue Account as a consequence of stock transfer has ensured that HHP can meet the Scotland Housing Quality Standard within the required timescale.
- 3.2 Tackling fuel poverty will be a key challenge for HHP. The planned investment in the housing stock will assist the Comhairle in meeting its fuel poverty target of 50% elimination of fuel poverty across all tenures by 2009 highlighted in its Local Housing Strategy.

Some Key Numbers

- 4.1 HHP is committed to the following:
 - Investment of 27.1 million in tenants' homes over the next 10 years and a total of £106 million over 30 years. This equates to £14,000+ per property over 10 years and £56,000+ over 30 years.
 - Delivering a £12.5m new build programme over a 10 year period which was part of a £15m Community Ownership Programme Support Package agreed with the Scotland Executive.
 - A minimum target of an average of 30 new houses per annum for affordable rent over the next 10 years.

Crofting Tenure and Housing

- 5.1 The high number of residents in the Western Isles living in crofting tenure has impacted on the distinctive housing tenure profile in the Western Isles.
- 5.2 Crofting which has been critical in helping retain rural populations has had a very positive impact on housing provision.
- 5.3 Continued support for crofters through the Crofter Housing Grant Scheme is vital to housing provision in the Western Isles. HHP will make its contribution to addressing housing need by increasing the supply of affordable rented housing in the future but croft housing will continue to be of the utmost importance particularly in the remoter parts of the Western Isles.
- 5.4 From HHP's perspective it is encouraging to note that in the Crofting Reform Bill Policy Memorandum there is reference to the importance of housing that is "affordable for young people to live locally as a dominant issue for crofting communities wishing to retain a balanced and sustainable population".
- 5.5 The wellbeing of crofting in the Western Isles is essential to the maintenance of balanced housing provision. Any changes to crofting legislation which would make access to crofts for local people more difficult with the consequent exclusion from support from the Crofter Housing Grant Scheme would be of concern. The Comhairle in preparing its Local Housing Strategy in 2004 found evidence of young people being priced out of the housing market.
- 5.6 The provision of new crofts is to be welcomed freeing up land and allowing more people to build their own home. However, the issue of absenteeism needs addressed albeit sensitively. There are significant difficulties currently in obtaining land for housing in the Western Isles.
- 5.7 Should the sale of crofts to the highest bidder become the norm young economically active families may not be able to compete for the purchase of tenancies of crofts with those with greater purchasing power from the mainland. The consequence of this would be to discourage people who want to live and work in the Western Isles from staying and those who do remain will turn to HHP for housing. Notwithstanding the increased investment by HHP in new build highlighted at paragraph 4.1 above, with the current demand on social rented housing substantial sums of public money would be required to meet the needs of the families who could if they had access to a croft, take advantage of the very cost effective support package available.

- 5.8 The importance of crofting tenure to the Western Isles is well documented. If access to crofts is improved rather than impaired by new legislation the budget for croft housing will need reassessed. However, the benefits of increasing the number of new houses being built by crofters will be far reaching both for the economic and social wellbeing of these islands.

Angus Lamont
Chief Executive
Hebridean Housing Partnership

Agenda Item 1

**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/1k

SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

1. **Constitution of the Crofters Commission** – The Comhairle is of the opinion that the members of the Board of the proposed new NDBP should be elected or at least has representation from the Local Authorities of the crofting areas. The head quarters or its functions that can be de-centralised should be relocated to the peripheral areas in the same way as the Crofter Housing team were relocated to Tiree.
2. **Local Policies** – The Comhairle welcomes the concept of Local Policies and recognises that even within the Western Isles there will be different priorities for distinct geographic areas. The local panels will need additional support from the Crofters Commission in developing local policies. It would also be beneficial if these local policies could feed in to the development of Local Plans to help guide planning policy. This could go a long way to preventing sporadic speculative development in favour of a planned approach with community support.
3. **Grant Schemes** – Whilst recognising that the new NDPB should have the flexibility to target funding towards specific local needs, care must be taken to ensure that the delivery of any grants scheme is complimentary to other schemes being delivered through the LEC's SEERAD or indeed through the new Rural Development Regulation Programme.
4. **28-Day Notice** – The proposal to reduce the bureaucracy involved in non-contentious applications is welcomed. It is hoped that the newly formed Commission will have similar performance criteria placed upon it as currently exists for other agencies to deliver regulatory decisions promptly.
5. **New Croft** – This is a welcome development particularly for the Estates that have (or may in the future) come into Community ownership. The creation of new crofts and the policy for assigning these new crofts must be carefully considered prior to their creation. As can be seen in the case of Orbst, land acquired for the best of reasons can cause some considerable acrimony when the thorny issue of who gets the tenancy has to be decided.
6. **Purposeful use and part purposeful use** – The provision in the bill to allow other purposeful use of the croft is entirely in line with the reality on the ground where crofts have been used for tourism, weaving, transport related businesses (car mechanics/buses etc) for many years. The definition of the purposeful use and indeed the definition of the cultivation required for the remainder of the croft needs some clarification. Cultivation in reality on the majority of crofts today means extensive grazing. And there are many crofts under forestry, which by definition is not agricultural land capable of cultivation.

7. **Crofters Commission to act against tenant in cases of misuse or neglect** – The enhanced regulatory powers proposed for the Commission to deal with neglect are welcome. However the Comhairle would urge caution to ensure that this provision does not become a “complainers charter” allowing spurious and vexatious complaints from others in the township with a vested interest to prevent or stifle appropriate diversification and use of the croft. Again as mentioned in 7 above the definition of misuse and neglect needs to be clearly understood. The proposed language in the Bill allowing non-activity to be for the purpose of conserving the Natural Beauty or the Flora and Fauna is excessively woolly and could easily be interpreted to mean anything. Any such alternative use should only be allowed under agri-environment scheme participation.
8. **Market Value of the croft asset** - This issue has singularly become the most controversial aspect of the Bill as presented and indeed it is accepted that the clause in question only refers to the asset value of a deceased’s estate not the value of a tenancy per se. As Professor Paisley quoted in his legal opinion “Crofting Legislation is not a model for clarity” and many people assumed that in the past the Crofters Commission did have a say in the value of a tenancy - which they didn’t. For anyone to deny that a market in croft tenancies exists is of course folly. However, there has recently been an upsurge in the prices being paid for croft tenancies that has raised concerns about the future prospects of local young crofters seeking entry to crofting. It is still clear from the statistics that two thirds of assignments (with no CC involvement) are indeed family assignments; one would expect that they might not be being transferred at such sums and that some of them are going to the next generation of crofters (but who knows?).

Comhairle nan Eilean Siar’s Joint Crofting Consultative Committee discussed this issue at a meeting last year, there were opposing arguments strongly in favour of both that a crofter should have the right to maximise the value of his/her tenancy and those equally convinced that this was an abuse of the system and detrimental to crofting. However when the Land Reform Act and indeed the proposed amendment to that Act to deal with Interposed Leases all refer to the value at DV valuation (effectively market value). It would be utterly inconsistent to limit crofter’s rights to realise the value of his tenancy (lease) if the same bill asked communities to compensate multi national companies for their tenancies (interposed leases) at market value -what’s good for the Goose? .

The most sensible way for the Crofters Commission to ensure that the Policy Objectives of the Bill as set out in the Policy Memorandum are met is to ensure effective regulation; there are 666 (unfortunate biblical connotation!) absentee crofters in the Western Isles. Effective regulation, which it has to be acknowledged, has already started in some areas must continue to make more crofts available. This alone will influence the market in both the numbers available and also by demonstrating to prospective purchasers that they have to abide by certain conditions to retain the croft.

9. **Land Court to Grant Access & Declare Boundaries** – These are welcome provisions enabling land locked crofts to be developed and used to their full potential. The proposal to allow the Land Court to declare that a croft boundary that has existed for 20 years to be the boundary will diffuse lengthy and costly boundary disputes.
10. **Re-organisation schemes** – The proposal to simplify reorganisation schemes are welcome. Crofting practices have altered beyond recognition in many areas and some sensible reorganisation schemes would be beneficial in assisting the most efficient use of the grazings and in-bye.
11. **Resumption process** – The concept of simpler and indeed temporary resumption orders are welcomed. The possibility for land to return to crofting that has been resumed but not used for the purpose for which it was resumed will be a powerful incentive for developers to “follow through” with development plans rather than leave sometimes very lengthy periods of uncertainty for communities.
12. **Removing barriers to alternative use of Common Grazing-** This proposal should encourage more communities to participate in forestry schemes and also opens the door to alternative uses for common grazings, possibly related to tourism or leisure industries that are currently not possible.
13. **Contravention of Grazings Regulations** – It is important that the suspension of anyone’s common grazings rights are carefully considered bearing in mind any stock that may suffer if required to be confined if even for a short time. The proposed new power is welcomed especially in relation to 12 above where alternative use of CG could conceivably cause damage.
14. **Schemes for development** – The proposals as outlined in the Bill do not appear to put the interests of the Community to the fore. Any developer should be required to consult meaningfully with the crofters as well as the landlord before the Scheme is presented to the Land Court. In principal though the approach is to be commended.
15. **Defining members of a family** – Whilst Comhairle nan Eilean Siar welcomed this proposal some members expressed the view that first cousins should probably have been included in the defined list.
16. **Engagement with planning** - Comhairle nan Eilean Siar in its response to the consultation exercise in 2005 requested that the Crofters Commission be a “Statutory Consultee” in the planning process, we welcome the move in that direction possibly in the forthcoming Planning Bill. It is regrettable that the speculative development on crofts epitomised in the Taynult decision last year has left the Commission powerless when faced with a Decrofting Direction accompanied by a valid planning consent. In the legislative process that follows it must surely be conveyed to the Land Court in such a way as to prevent a court driving a coach and horses through the Crofting Reform Bill and undermining the Crofters Commission in the process?
17. **Proper Occupier** – Although the number of owner-occupiers in the Western Isles is low it is welcomed that in the future any croft tenant will be treated exactly the same whether an owner-occupier or tenant. Many used the right to buy purely to avoid the onerous implications of crofting legislation.

18. **Land Reform Act** – Extension of the right to buy over leases, as previously alluded to in Para. 8 above this was a deliberate attempt to circumvent the Land reform Act and it has resulted in the Part III application from Pairc Trust being put on hold pending the decision of the Land Court on the competence of the Interposed Leases. However if their legality is secured by the forthcoming court case the extension of the right to buy over them raises serious concerns as to the value of these leases particularly if accompanied by development consent and following on from that the possibility of the community ever being able to exercise the right to buy if it has to be at market value.

Agenda Item 1
**Environment and Rural
Development Committee**

24 April 2006
ERD/S2/06/13/11

SUBMISSION FROM HIGHLANDS & ISLANDS ENTERPRISE NETWORK

1. Summary

Highlands and Islands Enterprise (HIE) as the Government's agency responsible for economic and community development across the northern half of Scotland has a significant interest in the ongoing development of crofting and the objectives and detail of the Crofting Reform Bill. HIE believes that crofting plays an important role in the economic, social, environmental and cultural health of the Highlands and Islands and that ongoing legislative and regulatory revision is vital to maintain the health of crofting. As such HIE welcomes the Crofting Reform Bill and the introduction of a revised legislative and regulatory framework.

HIE welcomes the opportunity to provide evidence to the Environment and Rural Development Committee, and would make the following key points:

- HIE welcomes the introduction of the Crofting Reform Bill and feels that there is much to applaud and support within the Bill.
- HIE would recommend that an overall vision for the future of crofting is developed by the Executive, the Crofters Commission, other involved agencies and crofters.
- Crofting can play a greater role in helping maintain and increase the population of our rural areas through encouraging and enabling more young and economically active people to live and work in our rural communities.
- The provisions in the Bill relating to the creation of new crofts are particularly important and have the potential to be a significant tool in the sustainable development and regeneration of rural communities in the HIE area..
- There is potential that the expanded developmental role of the Crofters Commission could cause confusion amongst crofters and others and lead to a cluttered funding landscape. HIE would therefore recommend that the work of the Commission focus on the regulatory aspects of crofting and dispersal of agricultural related grants and that partnership working between the Crofters Commission and HIE be better defined to help achieve our common goals.
- HIE would recommend that the Crofters Commission be obliged to utilise their existing and proposed powers to better regulate crofting. This process should be supported through setting the Crofters Commission targets in key areas of operation, such as percentage of absentee crofters and number of new crofts created.
- Crofting as a land tenure system is uniquely placed to be able to safeguard and develop the economic, environmental and social health of our rural communities. HIE would recommend that more robust measures be adopted

in the Bill and by the Crofters Commission to protect the interests of the crofting community as a whole as well as the wider public interest.

- The Bill gives communities under Part 3 of the Land Reform Act the ability to buy out interposed and other leases on crofting estates. Whilst this is to be applauded, it does not resolve the underlying issue of whether these leases are valid in the first place. The Minister has in the past made a public commitment that the Executive will test the validity of such a lease in the Land Court and HIE would urge that this be done as soon as possible.

2. HIE Response to the Consultation

HIE's strategic priorities for the economic and social development of the HIE area are set out in *A Smart Successful Highlands and Islands*. One of the aspirations within the document is for the region's population to grow by 15% to half a million by 2025. This will partially be achieved through growing our urban centres. However, crucially it also means an increased rural population in our smallest communities where their viability will rely on attracting more residents to create demand for, and sustain, local service provision. HIE believes crofting has an important role in helping achieve this aspiration through encouraging and enabling young and economically active people to live in our rural areas, thus meeting the future needs of our rural communities and supporting a dynamic and sustainable Highland and Islands.

The Environment and Rural Development Committee has requested views on the general principles of the Crofting Reform Bill. HIE would make the following comments on the key issues set out in the Committee's Call for Evidence:

a. The proposed change of status of the Crofters Commission to a non-departmental public body.

The Bill proposes a new constitution and general duties of the Crofters Commission to be compatible with furthering sustainable development of crofting and crofting communities.

- There is potential that the expanded developmental role of the Crofters Commission could cause confusion amongst crofters and others and lead to a cluttered funding landscape. In particular there may be cross-over between HIE's activities and the wider developmental function of the Commission.
- HIE would therefore recommend the Crofters Commission focus on the regulatory aspects of crofting and dispersal of agricultural related grants and that partnership working between the Crofters Commission and HIE be better defined to help achieve common goals.
- The Bill gives new powers and duties to the Crofters Commission and HIE would urge that the Commission be obliged to carry out these duties.
- The proposals in the Bill for the different application of regulatory policies in different local areas in order to better reflect local needs and priorities are welcomed.

b. Provisions for creating new crofts, including extending crofting tenure outside the historic ‘crofting counties’.

Creation of crofts

- The proposals to allow the creation of new crofts is seen as extremely positive and as a significant rural development tool throughout the HIE area.
- Under the proposals in the Bill it will be possible for a crofter to enter into agreement with a landlord to opt out of his/her statutory right to purchase or assign croft land, and for this to be binding on successive crofters. This is vital in order to encourage landowners to release land for new crofts.
- For this measure to be effective there needs to be widespread governmental and agency commitment towards effective utilisation of the proposed power, including an Executive stated annual target for new crofts created. This would be aided by a commitment by the Executive to release its own land for new croft creation, such as on Forestry Commission Scotland (FCS) land.
- HIE’s experience with community and other landlords indicates that there are considerable complexities in the creation of crofts and HIE would therefore urge that the detail of the Bill and the processes required be simplified as much as possible.
- Given the high level of demand for crofts it is unlikely that this measure on its own will be able to meet demand. HIE would therefore suggest that the Crofters Commission take effective action to address the issues and problems surrounding the sale and assignation of existing crofts, absenteeism and multi-croft occupation.

Extension of the crofting legislation outside of existing crofting counties

- This proposal is of great potential benefit and could include areas within the HIE area of operation currently not defined as within the crofting counties (e.g. Arran).
- For simplicity and ease of operation, HIE would suggest that the area of operation of the Crofters Commission should be expanded to make it at least co-terminus with the HIE area of operation.

c. Provisions specifying what crofts should be used for, and dealing with neglect etc.

The proposed provisions for a “proper occupier” are not included in the Bill and will be introduced as a Stage 2 amendment. HIE looks forward to being able to comment on the provisions when they are available.

d. The role and powers of the Commission in overseeing how croft land is used.

- HIE recommends that the Crofters Commission be obliged to use their existing and proposed powers to enforce crofting regulations. This process

should be supported through setting targets in key areas of operation, such as percentage of absentee crofters and number of new crofts created.

- HIE welcomes the proposals to allow the Crofters Commission to challenge neglect of crofts with consent of the landlord.

e. The way in which the views of crofting communities are represented, through grazing committees, area-based policies, etc.

The proposals in Section 32 for more powers for the Crofters Commission to enforce common grazings regulations are a positive step forward. This may be supported by the adoption of local policies better able to reflect local circumstances

f. Changes to the regulation of the market in crofts, including measures on assigning, dividing and sub-letting.

Sale of Croft Tenancies

- HIE feels that an unregulated and unchecked ability of crofters to assign tenancies, and to decroft croft land is a threat to the future of some crofting communities.
- HIE is concerned that there is little strategic planning behind the current ad-hoc sale of croft tenancies / croft land for housing development, that this is not necessarily meeting the housing needs of local communities, and that the Bill does not provide adequate means to prevent this speculation in croft land and tenancies. HIE would recommend that there should be improved and increased use of the regulatory powers of the Crofters Commission surrounding the sale or assignation of croft tenancies.

Releasing Croft Land for Housing

- Given the high demand for housing and house plots in the HIE area it is important that suitable croft land is released for housing development to meet this demand.
- HIE would recommend that the Bill should look to secure the long term sustainability of rural communities through a framework to encourage and enable young and economically active people to enter into crofting. Potential solutions to facilitate this and to help the release of croft land to meet local housing needs include:
 - Encouragement for local crofting communities to address local housing needs by the strategic release of croft land – particularly from common grazings.
 - A commitment and obligation for the Crofters Commission to greater utilise their existing and proposed regulatory powers.
 - The Crofters Commission to become a statutory consultee during the planning permission process so as to ensure that croft land is not lost to housing developers without consideration of the needs of the local crofting community.
 - Potential for provisions for decrofting applications to come before planning applications.

- Insertion of provisions in the Bill to temporarily suspend crofter's rights to assign or purchase crofts for an initial period of up to 10 years.
- Rigorous enforcement of regulations by the Crofters Commission to limit the number of absentee crofters.
- Restrictions on the number of separate crofts that an individual crofter can lease.
- Adoption in Local Plan zoning for a greater area of non-croft land for housing development.

g. Proposals to allow the development of croft land for non-crofting uses.

HIE welcomes the proposals in the Bill to help enable wind farm developments on croft land subject to further consideration of the issues set out in Point 3 below.

h. Changes to the crofting community right to buy (under the Land Reform Act) to allow any leases over the land also to be bought.

See Point 3a below.

3. Amendments to the Land Reform Act

Assurances have been given by the Executive that deficiencies in the Land Reform Bill will be rectified in the Crofting Reform Bill. On this basis, HIE would urge the following amendments be made to the Bill:

a. Leases over Croft Land

Under Section 35 of the Bill, it is proposed that crofting community bodies under Part 3 of the Land Reform Act will be able to buy out interposed and other leases on crofting estates. Whilst this clarification is welcomed, it does not resolve the underlying issue of whether these leases are valid in the first place. The Minister has in the past made a public commitment that the Executive will test the validity of such a lease on the Pairc Estate in Lewis in the Land Court. HIE would urge that this be done as soon as possible. HIE would also suggest that this issue could be further resolved by a provision in the Bill explicitly stating that such leases are null and void.

b. Crofting Landlord

In the context of interposed leases, who the crofting landlord is is not clear. The crofting landlord owes certain obligations to the crofter, but the mid-landlord under any interposed lease may not be able to fulfil some of these as it does not own the land.

c. Community right to buy

HIE would suggest that the Bill should specifically and explicitly allow "crofting community bodies" as constituted and defined under Part 3 of the Land Reform

Act to be able to register an interest in land under the Community Right to Buy provisions of Part 2 of the Act. In order to further align Executive policy and practice, HIE would also urge that crofting community bodies should be considered to be eligible bodies under the Forestry Commission Scotland's National Forest Land Scheme.

d. Mapping

Under Part 3 of the Act, Section 73 requires crofting community bodies to definitively map the location and boundaries of croft land or sporting interests. Given that quite often this has never been done (even on the sale of the land in the past), that the information is not held by landlords, crofters or the Crofters Commission, and given the complexity of croft holdings, this requirement is prohibitively stringent and is effectively preventing crofting communities exercising their rights under the Act. HIE would therefore propose that crofting community bodies should be required to carry out mapping under Section 73 (5) (a) to the same level of "reasonable diligent enquiry" as set out in Section 73 (5) (b).

e. Voters Roll

Both Parts 2 and 3 of the Act require community bodies and crofting community bodies to define their eligible membership with reference to the Voters Roll. However, whilst these bodies can look at the full Voters Roll, they are not entitled to copies of it (only the edited Roll) and therefore have to cross-check against the available edited Roll and manually copy names and addresses. This is time consuming and an unnecessary inconvenience. HIE would therefore suggest that this is rectified in the Bill by allowing community bodies and crofting community bodies copies of the full Voters Roll.

SUBMISSION FROM LEWIS WIND POWER LIMITED

1 EXECUTIVE SUMMARY

This written submission sets out our position in relation to the Crofting Reform etc Bill ("the Bill"). Naturally our perspective is drawn from our role as the developer of the proposed wind farm project at Galson, Barvas and Stornoway Trust Estates (the "Lewis Wind Power Project") but we believe that the issues which we identify below are issues which will arise for all wind farm developers and other developers of commercial renewable energy projects (or indeed any other developers) on crofting land.

We support many of the proposed reforms contained within the Bill and the aims behind those reforms. We have included in Section 4 of this note our commentary on two additional provisions of the Bill which are of particular interest to us. Our principal concern which we will address in this note and in our subsequent evidence, however, is that the extension of the right to buy the tenant's interest in **any** lease over eligible crofting land will seriously undermine one of the stated aims of the bill - to facilitate the use of croft land for non-crofting use to lead to a more diverse and more sustainable rural economy and more particularly :-

- (a) the uncertainty created by the proposed reform will stifle economic development on crofting land.
- (b) the mechanisms for (i) calculating "Market Value" and (ii) purchase of the tenant's interest could lead to unfair preferences in the market.

Notwithstanding the above we support a resolution of the issue created by the use (or potential use) of interposed leases to (i) thwart the ability of CCBs to collect the Landlord's income from such projects and (ii) to control the future development of land. We would submit, however, that there is an alternative route to dealing with the issue rather than those currently contained in the Bill and that route would resolve the issue without prejudicing the other aims of the Bill. We have detailed our proposed route in Section 3 of this note.

2 THE CASE AGAINST THE PROPOSAL

The proposal to extend the right to buy the tenant's interest in any lease over eligible crofting land (the "Proposal") is deeply concerning both (1) in substantive terms and (2) in light of the fact that a measure of such potential significance has only been introduced into the Bill at such a late stage, following almost nothing in the way of formal consultation. In our view the Proposal as it stands is fundamentally flawed

and must be reconsidered. The potential risk/uncertainty arising from this proposal has the potential to stymie commercial development of croft land.

2.1 Substantive Analysis

2.1.1 Failure to comply with the aims of the Bill:-

The Bill aims:

(1) to enable the traditional agricultural use of croft land to continue; and

(2) to facilitate the use of croft land for other non-crofting use for beneficial purposes.

It recognises that a rural economy that is more diverse is more sustainable and renewable energy developments specifically are viewed by the Scottish Executive as falling squarely within the bracket of other potential uses of croft land. The Lewis Wind Power Project has attracted local support on the basis that it has the potential to sustain the economy of the Western Isles with consequent benefits for employment and demographic profile of the Western Isles. In addition, the project will have direct benefits for the local community arising from the community funds and an the option for the community to take an equity stake on completion of the project.

In the Financial Memorandum which accompanies the Bill, the Scottish Executive reiterate that the Proposal is primarily to deal with the possibility that land owners will use interposed leases to complicate and thwart crofting community right to buy applications. It reasons that the Proposal meets this objective because "*if the crofting community body has a right to buy a lease it is unlikely that landowners will continue to create leases to achieve that goal since it would be pointless to do so.*" but fails to address, by the same rationale, the effect of the risks created by the Proposal to a developer.

We secured our interest in the land for the Lewis Wind Power Project by entering into long term commercially negotiated leases directly with landowners (including the Stornoway Trust) and with that security we have now invested significantly in the pre-planning and planning process, which we commenced in 2001. Assuming the project proceeds to construction almost all of the capital cost of the project will be expended prior to our being in a position to export electricity commercially from the project. i.e prior to any income being received. This model is typical for a renewable energy project development and the proposal creates two major concerns for any developer.

In the first instance, developers and their funders would not be prepared to make a significant investment (or further investment) if a CCB would have a discretion to buy out a tenants interest in a commercial lease of croft land. Prior to each stage of a major project being funded (whether by external or internal financing) it will be reviewed to assess the durability of its financial model and any risk associated with the project. The financial model here would rely upon a long term income stream to pay off the initial investment and ultimately to generate profit. That same income stream would be used to repay any borrowing from institutional lenders or investors.

The right to purchase would remove the foundation upon which the financial model was calculated and would present a risk which developers and their funders would simply not be able to mitigate.

Secondly, the uncertainty of tenure disincentivises developers to consider development of crofted land as at any time a CCB could open negotiations with a competing developer, if it has submitted an application to buy out the original developer's interest in the lease. Developers face substantial risks throughout the lives of projects which might not be fully reflected in the Market Value calculated under the Bill in the event of a buy out. This disincentive to develop would lead to communities losing out on the development revenues (including community funds). This was surely not the intention of the Scottish Executive in drafting the Bill.

3 AN ALTERNATIVE SOLUTION

3.1 A Solution Consistent With The Aims Of The Bill

As we have stated above the Proposal was introduced into the Bill at a late stage. In its analysis of consultation responses document (published in October 2005) the Scottish Executive recognised that the Proposal *"might discourage some leasing of croft land for purposes unconnected with crofting."* but decided to insert the proposal in the Bill nonetheless, stating *"given that a right to buy would be exercisable at market value and it would be for the crofting community body ("CCB") to decide whether or not it wished or was able to seek to exercise a right to buy in relation to any particular interest, there may be very little real disincentive with this option."*

Whilst we agree with the Executive's consultation analysis that, in relation to the issue of interposed leases, the "do nothing" approach is not an option, for the reasons detailed above we do not think that the Proposal is the solution to deal with what is in essence an "avoidance" issue and we do not think that the need for individual buy-out to be approved by ministers would sufficiently address the concerns of developers and allow them to invest in commercial projects. The Proposal does not actually prevent interposed leases from being put into place (regardless of whether it may be pointless to do so) and it does not address the underlying question as to the validity of interposed leases. Rather, the Proposal addresses the issue of interposed leases by placing all leases of croft land on the same footing as an interposed lease.

We would suggest that the best option is to address the actual issue itself and build upon existing avoidance provisions in the Land Reform (Scotland) Act 2003 itself. This would not involve introducing a new concept into Scots Law (as detailed below) and there are analogies to be drawn with some tax legislation which prohibit certain schemes to mitigate tax liability. That legislation and the 2003 Act concentrates on eliminating deals between certain parties and deals which are entered into for "avoidance" rather than on a commercial basis. This route would resolve the issue without prejudicing the other aims of the Bill.

3.2 New Concept into Scots Law

The Proposal introduces an entirely new concept into Scots Law – i.e. the right for a CCB which is buying a landowner/landlord's interest in land also to buy out the tenant's interest in all but a few specialized types of leases affecting that land. Traditionally any developer in Scotland making a sizeable investment where their interest in land was to be leasehold has sought to protect their position by entering into a long lease (greater than twenty years) which can be registered in the Land Registers/Registers of Sasine and enforced against the successor to the landowner/landlord. The Proposal would mark a quantum leap from that position where the CCB would have not only have the ability to acquire the croft land, but also the ability to remove tenants who would have entered into a long lease legitimately believing that they had secured their interest in the land.

4 COMMENTS ON PARTICULAR PROVISIONS

4.1 Section 5(3) agreements under the 1993 Act

As we have highlighted above, the key issue for a developer is obtaining a degree of certainty that vacant possession of the croft land can be secured. We therefore welcome the provisions of Section 11(1)(c) which insert new provisions (subsections (3) to (10)) into the Crofting (Scotland) Act 1993 and which will provide that: (1) contracts or agreements intimated to the Commission should be recorded in the Register of Crofts; and (2) where a copy of a contract or agreement is entered in that register it will (providing it is not specifically stated that the agreement is not to be binding on successors to a croft) be binding on the successors to the croft tenancy. We would like to see the Bill go further and remove the need for unanimous agreement of the crofters to be obtained provided ratification by the Land Court is obtained. For some developments unanimity would be impossible. For our own project we are dealing with more than two thousand crofters, some of whom are absent and living abroad.

4.2 Resumption of Croft Land

The extension of the definition of "reasonable purpose" in Section 26 to include the generation of energy is a welcome step forward. Again, we would argue that the amendment does not go far enough – if the goal is to facilitate the use of croft land for other purposes then it may be useful to broaden the concept of "reasonable purpose" to include schemes for employment, income generation and environmental improvement.

We note there has been some discussion over the proposals to amend the 1993 Act to empower the Land Court to determine that payments to crofters of a share in the value of resumed land may be made by instalments rather than in a lump sum. In our view, this is a key recognition of the commercial realities of the financing of energy projects and is to be welcomed.