



Environment and Rural Development Committee

14th Meeting, 2006

Wednesday 3 May 2006

The Committee will meet at 9.30 am in Committee Room 5.

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

Panel 1

Dr Jean Balfour, Member of Crofting Group, Scottish Rural Property and Business Association;

Andrew Hamilton, Royal Institution of Chartered Surveyors in Scotland;

Iain Russell, CKD Galbraith and Scottish Estates Business Group;

Panel 2

Duncan Mulholland, small landholder, Arran;

Matthew Hickman, small landholder, Dumfries and Galloway;

Hamish Jack, Spey Valley Crofters Association;

Panel 3

Cameron Maxwell, Rural Development Advisor, Forestry Commission Scotland;

Councillor Drew Ratter, Shetland Islands Council;

Agnes Leask, Joint President, Shetland Area, Scottish Crofting Foundation;

Panel 4

Sir Crispin Agnew of Lochnaw, Bt, QC; and

Duncan Burd, Rural Affairs Sub-committee, Law Society of Scotland.

2. **Item in private:** The Committee will decide whether to consider a draft Stage 1 report on the Crofting Reform etc. Bill in private at all future meetings until it is agreed.
3. **Subordinate legislation:** The Committee will consider the following draft guidance subject to annulment—

the Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance: Edition 2, (SE 2006/44).
4. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Sewerage Nuisance (Code of Practice) (Scotland) Order 2006, (SSI 2006/155).
5. **Annual report:** The Committee will consider a draft annual report for the Parliamentary year from 7 May 2005 to 6 May 2006.

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/S2/06/14/1a
Submission from Scottish Rural Property and Business Association	ERD/S2/06/14/1b
Submission from Scottish Estates Business Group	ERD/S2/06/14/1c
Submission from Duncan Mulholland	ERD/S2/06/14/1d
Submission from Matthew Hickman	ERD/S2/06/14/1e
Submission from Hamish Jack, Spey Valley Crofters Association	ERD/S2/06/14/1f
Submission from Forestry Commission Scotland	ERD/S2/06/14/1g
Submission from Shetland Islands Council	ERD/S2/06/14/1h
Submission from Agnes Leask	ERD/S2/06/14/1i
Submission from Sir Crispin Agnew of Lochnaw	ERD/S2/06/14/1j
Submission from Law Society of Scotland.	ERD/S2/06/14/1k
<u>Agenda Item 3</u>	
The Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance: Edition 2, (SE 2006/44)	ERD/S2/06/14/3a
<u>Agenda Item 4</u>	
The Sewerage Nuisance (Code of Practice) (Scotland) Order 2006, (SSI 2006/155)	ERD/S2/06/14/4a
Extract from the Subordinate Legislation Committee's 16th Report, 2006	ERD/S2/06/14/4b
<u>Agenda Item 5</u>	
Draft report <i>[Members only]</i>	ERD/S2/06/14/5a

Agenda Item 1

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/1b

SUBMISSION FROM SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

1. Introduction

1.1. The Scottish Rural Property and Business Association represents the interests of land owners and land-based businesses in Scotland. The Association welcomes the opportunity to give both written and oral evidence to the Committee on the Crofting Reform etc (Scotland) Bill ("the Bill").

1.2. This Bill aims to reform crofting law by amendment to the 1993 Act. The policy memorandum and title of the Bill suggest that this Bill aims to protect crofting. If this is really the objective then the long term interests of crofting as a form of land tenure and as a way of life must be recognised. Cooperation, with the development of compatible land use and employment opportunities within crofting estates, is supported by SRPBA. The Association does not favour fragmentation and individual speculation.

1.3. Based on the above, the SRPBA is not convinced the Bill reflects these principles. The Association would urge the Committee to consider the following areas of concern allowing the Bill in its present form proceeding to stage 2:-

- **Market in crofts** – the Bill should expect the Crofters Commission (or Landlords and grazings committees in the case of assignments) to deal more robustly with croft acquisitions, in order to deal with local interests;
- **Extension of Crofting outwith the crofting counties** – the Bill fails to recognise the practical problems which could be caused, for example land management and compensation.
- **Division of Crofts** - subdividing crofts is likely to reduce agricultural and purposeful use potential.
- **Crofting Administration** – the Bill offers the opportunity to simplify administration even further by allowing more decisions to be taken locally by crofters and owners if grazings committees could be properly constituted and accountable bodies.
- **Leases of croft land** – in closing a perceived loophole which could be used to frustrate the community right to buy, other legitimate arrangements which facilitate development and prosperity will be affected.

2. Market in Crofts

2.1. There are two aspects to the market in crofts:- (1) an individual, subject to Crofters' Commission approval, may be assigned a croft tenancy and "purchase" the improvements from the previous tenant, and (2) An existing croft tenant can with the approval of the Land Court acquire his croft and is then free to sell it. In the first case, compensation for improvements on assignment must not be inflated to become a premium for the assignment. In the second case, the existence of crofting tenure should have the effect of dampening value on re-sale so that the croft stays affordable for genuine crofting.

- 2.2. The assignment of a croft tenancy should require agreement by the landlord and the Crofters' Commission. The Bill is removing the landlord's input in a family assignment, and this, in conjunction with the generally held perception that the Commission does not take an adequate interest in regulating assignments, is likely to aid the free market in crofts. Rather than change the law, the Commission could be encouraged to take a more robust view on assignments within its current powers.
- 2.3. Previous witnesses indicated that the individual crofter's absolute right to buy has not been as widely exercised as anticipated. This suggests that, on the ground, there is still a recognised and valuable role for crofting as a form of tenancy, and therefore a role for the landlord. SRPBA wholeheartedly endorses this view but the Bill appears to diminish this role even further.
- 2.4. When the individual crofter's right to buy was introduced it was clearly intended that the crofter would continue to occupy the croft (becoming in effect his own landlord). It was also intended that he would not be able to exploit his position by immediately selling the croft to a third party for a windfall gain. The clawback provisions in the 1976 Act were intended to ensure that the requirement to share any uplift with the former landlord on any sale within 5 years would act as a deterrent to selling the croft to the highest bidder. Some 15 years after that Act was passed, a legal loophole developed which allows an owner occupier crofter to sell to a "nominee" (for example a third party developer) without the requirement to share the uplift with the former landlord (see *Whitbread v Macdonald* 1992 SC 479). This has opened the way to speculation in croft sites and has encouraged the free trade in crofts on the open market. This invariably leads to crofts being sold at prices well beyond the reach of local people wishing to get into crofting.
- 2.5. Those who have a genuine interest in crofting as a way of life and as a mechanism for sustaining economic activity in crofting areas comprise both landowners and crofters. SRPBA believes there would be widespread support not only for closing the nominee purchase loophole but also increasing the clawback period through this Bill. It has been suggested that the clawback period should be increased to 25 years, but we believe this is perhaps unreasonable. A 10 or 15 year clawback period may well be sufficient to dissuade the developing speculation in crofts which is so detrimental to the long term future of traditional crofting.
- 2.6. In addition, the fixing of croft rents by the Land Court for the purposes of calculating the price which the crofter must pay on exercising his right to buy should include consideration of the current market value. As a result landowners would receive a fairer price for their land – and this is as important for community landowners as traditional estates. Not only would this deal with concerns about compliance with the European Convention on Human Rights but would also act as a disincentive to speculation.
- 2.7. SRPBA would welcome the "proper occupier" provisions in principle, however at the time of writing this submission members have not yet had the opportunity to fully consider the proposals. It is unfortunate that the introduction of the Bill could not have been delayed until this provision had been finalised by the Scottish Executive. Political expediency or pressure should not take priority over well considered legislation.

3. Extension of Crofting outwith the Crofting Counties

- 3.1. Crofting is not the only tool for rural development and any extension of crofting tenure beyond the traditional crofting counties should be given much further consideration before being seriously contemplated. The disadvantages may well seriously outweigh the perceived benefits. Crofting has been used to attempt to preserve a way of life and culture in the historic crofting counties. However, to impose it on other areas of Scotland which have long since evolved in a different direction is likely to simply create anomalous pockets of a generally different tenure.
- 3.2. The perceived benefits to the small landholder of conversion to crofting status are thought to be threefold namely (1) access to grants for housing and other schemes (2) increase supply of housing and (3) absolute right to buy. There are however difficulties in the rationale behind all three arguments.
- 3.3. The first benefit can be achieved without imposing crofting tenure. In fact, section 4 of the Bill already allows for schemes to provide grants to occupiers of holdings which are similar to crofts outwith the crofting counties. It is not a reason for extension of crofting.
- 3.4. The second benefit is inextricably linked to the planning system and availability of infrastructure. The desired outcome can again be achieved without imposing crofting tenure. Rural exception sites and rural housing burdens can both be used to increase supply of land for purely affordable let housing. We know that landowners do and will release more land for housing if they can be guaranteed it will remain affordable to let in perpetuity. The mechanisms mentioned (rural exception sites and rural housing burdens) would achieve this but crofting would not.
- 3.5. It remains therefore that the only real driver for creation of crofting outwith the crofting counties is the absolute right to buy. Whilst it is easy to appreciate why the handful of small landholders (for example on Arran) would wish to be given the right to buy land at greatly reduced value, the interests of the owner should not be ignored. The compensation provisions are inadequate, and assume that the only loss to the owner will be monetary. The further erosion of the property rights of these owners must be recognised.
- 3.6. In addition this measure is disproportionate and risks damaging the already fragile confidence in the tenanted land sector throughout Scotland. Owners and tenants alike wish to see a healthy let land sector. Tenancies are often the only way for young people to get into farming and with the new rights of diversification under the Agricultural Holdings legislation they offer a better opportunity than ever for farmers. However, owners are much less likely to make land available for letting if they believe it will be removed from them involuntarily through compulsory purchase/absolute right to buy. Small landholders already enjoy the protection and security of the Small Landholders Acts as well as, we believe, the Agricultural Holdings (Scotland) Act 1991. This includes a pre-emptive right to buy on registering an interest.
- 3.7. Therefore to create a small number of farmers outwith the traditional crofting areas with an absolute right to buy living and working beside other farmers who do not enjoy this privileged position is bound to destabilise the whole sector to the detriment of everyone involved – both tenant and owner.

4. **Division**

4.1. SRPBA believes that sub-division of crofts is generally not desirable because it reduces the flexibility for agriculture or purposeful use. The Bill removes the ability for the landlord to give or withhold consent to division. Interested parties are instead given an opportunity to object with no assurance that a valid objection will be considered or upheld. This is an example of where the steady erosion of the landlord's role is detrimental to crofting generally. Division cuts across (and in effect acts as a loophole to) the requirement that a croft should have no more than 2 houses (see rule 8 of Schedule 2 to the 1993 Act). By simply creating more and more smaller units, traditional crofts will simply be turned into a number of house sites, with no assurance that these houses will remain affordable for local people in perpetuity, and the end of traditional crofting as land-based economic activity.

4.2. As indicated above there are other mechanisms available which are currently underused and could help provide affordable housing in rural areas. This Bill should not confuse solving rural housing issues with crofting. The Bill should surely try to preserve crofts as economically active parcels of land on which primarily land-based activity occurs and on which local people live and work. Division is contrary to this principle in most cases.

5. **Crofting Administration**

5.1. SRPBA (and its predecessor Scottish Landowners' Federation) has always advocated that if grazings committees were properly constituted, democratic and accountable, then most decisions could be taken on the ground between the crofters and owners, with involvement of the Commission only where agreement can't be reached or where one party is absent or unreasonable. It is correct that there should be an effective regulating body to deal with situations where one party does not comply with the letter and spirit of crofting legislation. But bureaucracy could be reduced if local people were enabled to take the majority of decisions locally.

5.2. SRPBA believes that greater cooperation between the parties actually involved on the ground at a local level could avoid many of the criticisms currently level at the Commission. Whilst the Bill introduces the concept of local panels, it unfortunately does not attempt to address the issue of constitution and accountability of grazings committees, and in fact seeks to ignore both them and landlords. The Association believes that there should have been at least consultation on this issue and further thought given to possible solutions before the Bill was introduced in Parliament.

6. **Leases of Croft Land**

6.1. The Bill attempts to close a perceived loophole in the Land Reform Act which is thought to have the potential of frustrating the crofting community right to buy. The target of this measure appears to be the interposed lease by which effectively all the rights and obligations of the landlord are transferred to a third party for a period of time and which "interposes" a new landlord during that period.

6.2. SRPBA would not support any device which is designed purely to defeat the intention of parliament. However the Bill as drafted goes further than is required. It would enable any lease over croft land to be acquired, not just the interposed lease "device". There

should be a distinction drawn for leases which have been put in place for valid commercial reasons, often with the consent and concurrence of the crofters at the time. If crofters consented to a lease which brings mutual benefit to the owner and the crofters, then SRPBA believes that this leasehold interest should not be able to be compulsorily acquired by the community.

7. Other comments

7.1. There are many other aspects of the Bill which cannot be covered adequately on 4 sides of A4 paper. SRPBA believes that some of these provisions are positive changes for the future of crofting. We welcome the ability for crofters and landlords to undertake joint forestry schemes for example. Equally we welcome the ability for prosperity and shared benefit from development on croft land to take place through development schemes when landlords and crofters are in agreement. These examples of partnership working between crofters and landlords should be developed further into other areas of crofting.

7.2. The increasingly diluted role of the landlord is therefore a negative development which we believe to be to the detriment of crofting generally. The landlord's role is not fully recognised in a number of areas of the Bill for example in local policy and local panels (section 2A page 3), division (section 14 page 23), subletting (section 15 page 24), assignation (section 16 page 24), succession (section 17 page 25), crofter forestry (section 30 page 43) and apportionment (section 33 page 51).

7.3. SRPBA welcomes the ability for croft to be used for wider "purposeful use". This brings crofting into line with Agricultural Holdings legislation and the need for sustainable diversification of rural businesses. However we feel the definition of purposeful use in section 11 of the Bill (page 19) should make it clear that crofting activity should remain land-based.

7.4. The provisions for landlords to be required to consent to new access to crofts should also deal with issues of ongoing maintenance of access roads by the crofter(s), and ensure that access is to enable a croft be to used as a croft for a purposeful use.

7.5. The reduction in the landlord's ability to refuse consent to a forestry development by crofters should be accompanied by adequate compensation for loss of property and sporting rights. This is missing from the Bill as drafted.

SUBMISSION FROM SCOTTISH ESTATES BUSINESS GROUP

BACKGROUND

SEBG represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland's land resource in ways which deliver social, economic and environmental benefits. The Group seeks to secure a sustainable and prosperous future for Scotland's rural areas.

OVERVIEW

The Group's members have widespread agricultural and crofting interests in Scotland, and share the stated objectives of the Crofting Reform Bill of ensuring crofting has a sound future. However, SEBG has concerns about certain provisions within the Bill, which we fear may not help achieve the objective of delivering a secure future for the crofting sector and indeed may run counter to it.

In summary, SEBG firmly believes that modernising crofting legislation is necessary and welcome. However, the greatest care must be taken to avoid legislative measures that will fuel the market in second homes and lease assignments which has developed in the traditional crofting counties. It cannot surely be in the interests of crofting for the new legislation to create a system where people can make a fast buck, regardless of the future. The new legislation, intended to underpin and encourage crofting as a sustainable way of life, risks delivering the very opposite. Furthermore, the legislation must not be allowed to create instability within the agricultural sector at a time when there is widespread industry acceptance that stability is of crucial importance.

SEBG's concerns relate to:

- the role of the Crofters Commission in facilitating sustainable crofting
- the unspecified extension of crofting areas;
- the introduction of crofting rights to small landholders;
- proposals for simplifying assignment of crofts, thereby facilitating a market in crofts and its potential consequences for new entrants;
- non-agricultural developments on crofting land;
- community body rights in relation to interposed leases;
- nominee purchase – not covered by the Bill.

PART 1: CROFTERS COMMISSION

Whilst the Group regards as laudable moves designed to update and modernise crofting legislation and administration and to simplify processes, attention ought also to be paid to how regulatory control is delivered in practice. The Crofters Commission's main objective

is to promote and maintain a thriving crofting community. It must be a regulator as well as supporter. However, the Commission is perceived as being less effective than it might be. There is a need to put in place stricter controls on crofting grants for non-active crofters, and also to interpret “thriving” as the need to sustain the community through traditional methods first and foremost, coupled with diversity controlled to ensure it is sympathetic both to crofting as a way of life and to local circumstances and opinion. In addition, since the Bill is proposing extension of the role of an already overstretched Commission, it will be important that extra resources are directed at delivery of its expanded brief, including for training.

Apparent weakness by the Crofters Commission in delivery of its function as a regulator has facilitated the creation of the market in crofts. Strengthening the onus on the Commission as a regulator, making it a duty rather than a power, would help to rein in spiralling prices in the market for crofts.

The Taynuilt case - where the owner of croft land was granted approval to decroft by the Crofters Commission, despite local opposition, as a consequence of its being zoned for housing by the local authority - flagged up the need for the Crofters Commission to be involved in the early stages of planning applications where croft land was involved. SEBG suggests that as part of its new regulatory structure being established by the Crofting Reform Bill, the Crofters Commission should be listed as a statutory consultee in planning issues, to ensure the crofting community’s voice can be heard, and at a sufficiently early time in the process to ensure its views can be given full weight.

Whilst demand for crofts may seem to be outstripping supply in places, some traditional crofting regions are seeing perhaps 25 – 35% of crofts being left unworked. Whilst the Commission maintains a register of crofts to enable it to carry out its functions, there is also a need to liaise more with landlords and grazings clerks to ascertain what is actually happening on the ground, to improve good practice on croft land, and to ensure that the issue of non-active or absentee crofters is properly dealt with. Linked to this is the need to encourage young people to take over from the elderly / non-active crofters, and to give the elderly / non-active more of an incentive to pass on crofts.

PART 2: CROFTS

Section 10: New crofts

An improvement in crofting administration and a serious attempt to tackle the issue of absentee crofters must be greater priorities for the Crofters Commission than extending crofting boundaries.

The original purpose of crofting boundaries was to retain a certain traditional lifestyle. Now, some years on, any area excluded from that original decision will have moved on from that model. It is questionable, therefore, whether extension of traditional crofting tenure to outwith current boundaries could have any practical effect in delivering that objective.

SEBG questions the need for extension of crofting boundaries. According to the Scottish Executive’s Draft Crofting Reform Bill consultation paper, published in 2005 and on which this Bill is based, “it is now possible to create holdings in the rest of Scotland which in terms of tenant’s rights and landlord’s responsibilities can be identical to crofts without extending crofting legislation.” There is therefore no need to extend crofting legislation, but rather, to modernise it by equipping it to cope with 21st century developments.

SEBG is extremely concerned about the effect any extension of crofting areas or rights to small landholders would have on confidence in the rural economy and specifically the agricultural sector. Extension by the Bill of absolute right to buy to small landholders in the non crofting counties would be very likely to reopen the whole debate on the absolute right to buy for tenant farmers generally, since it would create the potential for disparity between neighbouring tenants, with one being given an absolute right to buy whilst the other has a pre-emptive right to buy following a decision by the landlord to sell.

The Group fears that any further upheaval in the legislative basis on which agricultural holdings across the rest of Scotland are managed would seriously undermine the whole land management sector, just when the Agricultural Holdings (Scotland) Act 2003 is settling down and the new letting vehicles it introduced are being embraced. There is industry wide consensus that what is now needed, instead - particularly given the difficult trading conditions facing the whole agricultural sector - is a period of stability to allow the Act to bed down and for landlords and tenants alike to work together constructively to make the new arrangements work effectively. Such a period of stability would give greater confidence to invest to all those involved in the sector – and in many ways more importantly those not currently involved in but contemplating entry into the sector.

Further, it must be expected that the unspecified proposals would lead to the dilution of the funding currently available to crofters within established crofting areas. This would inevitably have a negative impact on the sustainability of crofting communities generally. A strong view has been expressed within existing crofting counties that weaknesses in crofting administration should be addressed first, before any extension of crofting areas should be entertained.

Section 11: Statutory conditions

SEBG welcomes the intention to modify conditions of tenure so that unacceptable neglect or misuse of croft land can be identified and resolved. Measures to address the non-working or neglect of crofts by tenants are to be welcomed, but it will be important that they are matched by similar measures targeted at negligent owners, in the interests of best crofting tradition. SEBG welcomes, in principle, the indications being given by the Scottish Executive that amendments will be brought forward at Stage 2 to ensure that the requirements of and expectations on crofting owners replicate those on crofting tenants. However, the effectiveness of such a proposal, and thereby the way in which it works to inhibit absentee crofters, will be dependent on the way in which the Crofters Commission carries out its responsibility to monitor and act upon practice which falls below an acceptable norm.

Section 16: Assignment

SEBG members with crofting interests take active measures to facilitate new young entrants to crofting. However, the Bill proposes less scrutiny of assignments by the Crofters Commission. SEBG is concerned that the ease with which croft tenancies may henceforth be transferred will do nothing to restrict the market in crofts which has developed in recent years.

Increasingly, Scotland is witnessing remote and rural properties being bought up as second or holiday homes, with consequences for the sustainability of local economies and communities, as well as for the prospects of youngsters who may wish to continue to live in their local areas but who are forced to move away in the search for affordable housing. If nothing is done to limit the developing market in crofts, and for sums well out of the reach of aspiring youngsters, it will become increasingly difficult for young people to get

that vital first step on the crofting ladder. This concern has real implications for the provision of what we see as the ability of these young aspiring croft entrants to tap into 'affordable housing' through the grants available, hopefully reducing the migration from some of Scotland's most fragile rural areas.

One measure which would assist would be to increase the clawback period on the onward sale of a croft after the exercise of the right to buy from 5 to 10 years. This would assist traditional crofting communities since it would help to protect against transfer of crofts on the open market for reasons less to do with crofting and more to do with making a "fast buck".

PART 5: SCHEMES FOR DEVELOPMENT

Section 34: Schemes for development

The opportunity for crofters to diversify is to be welcomed as an attempt to reinforce the economic viability of crofting as a business activity. However, SEBG would be concerned if the proposal to modernise conditions of tenure to allow wider use of crofts opened up the way for non-agricultural people to exploit good crofting land for business developments not necessarily suited to local conditions or community interests. Further, if too much leeway is created for non-agricultural development, then the selling on of croft tenancies at much higher prices, and mainly to those who are looking for a lifestyle change and who do not necessarily need to work or make a living from the croft, could be exacerbated.

Clearly, a careful balance will need to be struck in assessing what constitutes appropriate development. Scotland's progressive estates recognise and support the importance of business innovation and development in ensuring the sustainability of rural communities and welcome measures which will encourage greater opportunities for crofters to grow their business activities and incomes. However, we also look for reassurance that the Bill and its effects on the way in which the Crofters Commission is to carry out its role will not be able to be used as a "NIMBY-ist" vehicle to stop or divert well-meaning initiative.

We suggest that the guidelines to be used by the Crofters Commission in considering whether to grant approvals should be appropriately defined. While supporting the concept of alternative uses of crofts, given the current state of the agriculture sector, safeguards in the Bill should be extended to include the best interests of the local community and the natural and cultural heritage.

PART 6: CROFTING COMMUNITY RIGHT TO BUY

Section 35: Crofting community right to buy

SEBG appreciates concerns that there may be scope, in particular circumstances, for leases over crofting land to frustrate the intention of the crofting community right to buy or act as an impediment to sustainable development by a crofting community. The Group cannot condone action which can clearly be shown to be based not on good practice but designed solely to circumvent the stated will of Parliament.

Nevertheless, non-crofting leases over croft land are relatively commonplace – typically relating to the extraction of minerals, and use of the land for shooting and fishing – and exist for legitimate commercial purposes. Leasing arrangements are the usual means of maintaining the relationship between the owner of mineral rights and the developer extracting the minerals, not just on croft land but everywhere.

Further, it is a common ownership arrangement for property to be owned by a “fiar”, but occupied by another party under a lease for life. Arrangements such as this would presently fall under the proposed legislation, leaving a genuine life renter’s interest at risk of an absolute right to buy from a third party body. Further and tighter definition is essential to ensure that only those leases that can be shown to be a deliberate attempt to remove what would otherwise be eligible assets would be available for purchase by a crofting community body.

Even with tighter definition, there must be a strong risk that the proposal contained in the Bill to create a crofting community right to buy a tenant’s interest in commercial leases over eligible croft land, in addition to the right to buy the land itself, could have an adverse effect on the commercial exploitation of croft land generally. This could only be to the detriment of remote rural economies.

One issue which must also be resolved is the question of how the Crofting Community Right to Buy would apply in any areas where new crofts were created. There would not be a crofting community in existence prior to the creation of any new crofts, and the creation of one or two individual crofts (with the individual right to buy) would leave uncertainty over whether the wider absolute Right to Buy of crofting communities would then be created, or whether instead any new right was the pre-emptive Right to Buy of non crofting communities. SEBG suggests that the definition of what constitutes a crofting community in the context of new crofts must be clarified if uncertainty is to be avoided.

ISSUE NOT COVERED BY THE BILL

Nominee purchase

As stated above, SEBG firmly believes that modernising crofting legislation is necessary and welcome. However, the opportunity presented by the passage of the Crofting Reform Bill should be taken to introduce measures which would act as a brake on the developing market in second homes and lease assignments.

The provisions of the Crofting (Scotland) Act 1993 ensure that a crofter or his family successors would not be able to exploit any land acquired from the landlord by selling it to anyone else within 5 years of purchase unless sharing any gain with the landlord. The legislation nevertheless allows the crofter to contrive a conveyance from the landlord to a nominee without triggering this “clawback” provision. Such a device can be utilised by those who choose to “make a fast buck” at the expense of crofting by selling on to non-crofting interests ready to pay over the odds for their crofting equivalent of a “place in the sun”.

SEBG suggests the Committee take the opportunity presented by the Crofting Reform Bill to put restrictions on such nominee purchase. This proposal, which has regularly been put forward to the Scottish Executive by the SRPBA, could do much to assist the continuation of traditional and sustainable crofting by damping down the developing open trade in crofts which is already pricing local young people out of the market.

Agenda Item 1

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/1d

SUBMISSION FROM DUNCAN MULHOLLAND

I run a “small landholding” of 50 acres on the Southern section on the Island of Arran, running 16 suckler cows and 40 store sheep. The Small Landholding has been in my family since before Crofts were invented and together with my colleagues we support the call for Arran to be included in the Crofting counties.

Arran is the only Island (maybe Bute and Cumbrae?) and is also the only area covered by the HIE which is not in the crofting counties.

EXTENSION OF CROFTING TENURE OUTSIDE EXISTING CROFTING COUNTIES

The Isle of Arran, along with other disadvantaged areas of Scotland, have made representation to the Scottish parliament to be included in the Crofting Counties for one reason and one reason alone.

“Farming in these areas has become increasingly difficult, especially in the last ten years, and in order to survive we must be able to diversify and protect the rural population of which we form a part.”

Arran has two distinct type of Farmers.

Owner/occupiers

Tenant Farmers.

1.OWNER/OCCUPIERS

The owner/occupiers will have the ability to diversify into creating new crofts, and this is made more likely with the “current contracting-out arrangements”.

This can only help (albeit small) the chronic housing situation on the Island.

The Island of Arran also lends itself to Forestry crofting

The creation of Forest crofts would also alleviate the housing problem to some extent.

These new crofts need not be entirely agricultural in nature, allowing some local diversity to flourish and maintain rural infrastructure.

2.TENANT FARMERS

On Arran over 90% of tenant farmers whose lease extends for more than one year continuously are “Small Landholders”, and their leases fall under the 1911 Act.

It cannot be stressed enough that Small Landholders are not automatically smallholders.

A small landholder is an individual who was cleared to or allocated a portion of land with no buildings whatsoever. He/she had to clear/fence/drain/ditch and erect any buildings that were required to operate the unit and that includes his/her own dwelling.

Unfortunately the Small landholder had been overlooked in the spate of land reforms which have passed through Parliament this last 100 years. In fact the very same argument was aired in 2003 to no avail, therefore this is likely to be our last chance to level the playing field.

The small landholder does not have an absolute right to buy as do crofters nor a pre-emptive right to buy as do tenants who hold tenancies under the Agricultural Holdings Act 2003. In fact there are many benefits that Crofting status and Agricultural Holdings (2003) have that small holders will never have under current legislation. The ability of the Small Landholder to diversify is severely restricted due to the lack of collateral (as seen by the lender) It is for these reasons that small holders and are keen to see Arran in the Crofting counties.

I was very pleased to see that there is an avenue open in the Bill to allow tenants of small landholdings to convert to crofting status.

I can also follow why there has to be a mechanism to allow for compensation to the Landlord, however there are some conditions which require some further thought

CONDITIONS FOR SMALL LANDHOLDERS TO CONVERT TENANCY

Condition 11.c “that the holding does not exceed 30 hectares”

Like Crofting in the last 100 years, there are many Small Landholdings which amalgamated to form larger units in order to survive. This was due, in almost all cases, to the fact that the Landlord had no other willing tenant for the neighboring small landholder. Unfortunately the Small landholders who had this opportunity now fall outside the 30 Hectares. In Arran this amounts to

25% of the Arran Small landholders although none have more than two amalgamated small landholdings and none have inbye land greater than 60 Hectares. In order to capture this significant percentage of small landholders I ask the parliament to reconsider if any size limit is necessary.

Condition (d) “that the holding is not comprised within a larger agricultural unit, the holding and that larger unit being, or having been, worked, managed or let as a single unit;”

This condition requires some clarification.

Every farm on Arran (and indeed probably in Scotland) at one time or another is comprised of several smaller units depending on how far you want to go back in time.

With respect to the small landholdings mentioned above, again as the two holdings were amalgamated, the tenant was encouraged to trade under one holding by both the Department of Agriculture and the Landlord, in order to ease the mountain of paperwork in recent years. The larger unit is still governed by the 1911 Act.

I propose that the conditions (c) and (d) are not required as they will prejudice a significant number of legitimate small landholders.

The other conditions appear to be fair.

Agenda Item 1

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/1e

SUBMISSION FROM MATTHEW HICKMAN

I hope that a little personal background may help illustrate my perspective on the proposed creation of new crofts in Dumfries and Galloway – I am particularly enthusiastic about the potential for woodland crofts.

Nearly 10 years ago my Wife and I abandoned life in the city, sold our house and the business we had spent 8 years building up, bought a camper van, stuffed the cash under the mattress and set off full of hope in search of land to buy and settle on.

Over the next 12 months we covered just about every square inch of Great Britain including England, Wales and Ireland, both North and South. Scotland was our last hope. We comprehensively covered the highlands and found the same problem there as everywhere else – Land that we found within our budget was cheap for a reason – generally that there was absolutely no chance of gaining planning permission to live on it.

As we despondently headed back down south we stumbled entirely by accident on “Carsphairn” in Dumfries and Galloway and heard to local gossip about the “Carsphairn Smallholdings Policy” – an initiative set up by the community council to attract appropriate re-population from people who could make a contribution to a Parish suffering the consequences of long-term population decline.

To cut a very long story short we ultimately managed (under entirely false pretences) to buy 50 acres of land from a private forestry company. We have lived here very happily for the last 6 years and have created a registered agricultural holding, a family home and a business, or rather businesses – I break and train British Native Ponies for draft work on smallholdings and in forestry (Our main business – set up with a Farm Business Diversification Grant from SERAD), sell fencing timber machined from my trees using a small chainsaw mill, grow Christmas trees and supply foliage for Christmas wreaths, run 2 annual music festivals (promoted by Knockengoroch Festivals, one of the first “Community Interest Companies” in Scotland), write for various rural magazines and build dry stone walls on piece rate.

This experience has given me an unusual outlook on rural regeneration and repopulation – We arrived here as incomers, settled and integrated well into the community and now share it’s concerns for the future.

In an attempt to repay the debt of gratitude felt to Carsphairn as it had allowed us to fulfil our aspirations to own and work land I asked various local people

active in the community how best I could help and was left in no doubt that the best favour any one could do was to attract more people who would help underpin our local services and maintain the life of the place.

To this end I have undertaken a number of roles and joined various groups; I am vice chair of the Glen Kens Affordable Housing Group which worked with Communities Scotland and Craigforth Consultants to produce the Glen Kens Affordable Housing Study in March last year. This study was well received to the point that the council has funded a further 3 studies in other areas of D&G suffering historic population decline. A further direct consequence was Communities Scotland's agreement to extend Rural Home Owners' Grants to D&G – perhaps our biggest victory yet.

I am also a director of the Dumfries and Galloway Small Communities Housing Trust, a registered charity presently actively trying to emulate the superb work done by the Highlands Small Communities Housing Trust in providing housing for local people, incomers, key workers and land banking sites.

With reference to the objective of the bill to support a distinctive music and culture I am Production Manager for two small music festivals a year, I am also a registered Shelter volunteer, working closely with their Sharc project (Shelter housing action with rural communities).

I have been co-opted onto the community council in Carsphairn, with responsibility for renewal and regeneration of the parish, and am Chair of the PTA at our struggling Primary School.

I was recently asked to give a talk at our Town Hall as to my opinion on the performance of our Smallholdings Policy, and found that of 12 Smallholdings established we had 1 second home, 1 holiday home, 9 retirement homes and 1 working smallholding (mine).

On first site the statistics available to me for my research appeared confusing; In the 10 years between 94 and 2004 we have seen 12 smallholdings started and an increase in our parish population of 10%, whilst at the same time attendance at our school has dropped from 25 (1994) to 7 (2006) a loss of over 70%. The Congregation at our church has never been smaller and our local shop has been closed for 3 years only recently reopening after considerable effort from the community.

Amongst people who have lived here all their lives there is a much-bemoaned loss of sense of community, communicated to me as an incomer as a relatively recent state of affairs.

This experience provides the basis to my long term argument that small rural communities suffering long term population decline benefit from appropriate repopulation but not the nett in-migration from capital rich down shifters and second home owners who contribute only to the statistics, but not to the

school, Church, Shop or sense of community so desperately needed to hold the whole thing together.

Other than from my development we have never had a child in the school as a consequence of our Smallholdings Policy, No business started, no long-term employment created.

I am genuinely enthusiastic about the potential of new crofts (particularly woodland crofts) to attract interest from people who could make a contribution to our community – the young and economically active – just as long as it is administrated correctly.

The relevant areas will be;

1/ The right to buy.

From my experience in the affordable housing sector I fully understand why neither the Forestry Commission, nor any other land owner in their right mind would allow crofts to be developed on their property if the tenant (crofter) had an absolute right to buy. This appears to have been adequately dealt with.

2/ Ensuring that the areas within D&G most in need of the benefits of new crofts are those prescribed by ministers for the extension of crofting tenure.

These will be identified in the local housing strategy as having suffered historic population decline and will have the necessary planning policies in place to allow “dispersed housing development in the countryside”

3/ The issue with lenders not being keen to offer a mortgage on a house built on leased land will need to be addressed.

We have circumnavigated this issue entirely by not having a house, our two mobile homes having provided perfectly adequate accommodation for a young family for the last 6 years.

I would be suspicious of applicants whose first priority was the building of a house.

Had we adopted the route of obtaining a mortgage first we would have gone bust within 12 months. Surely the business must be established first to allow the mortgage to be repaid, and there are other priorities; sheds, fencing, cutting down trees etc.

4/ Ensuring that the tenancy for the croft is allocated to the applicant most suitable or beneficial to the community, not simply the wealthiest.

Crofts created in D&G *will* be oversubscribed and someone will have to discriminate for or against applicants.

To allow the market to decide, to encourage discrimination on wealth, rather than social benefit implies that the bulk of the objectives of the bill are unlikely to be achieved and thus the initiative will fail in the same way, and for the same reasons as our smallholdings policy. As I said at the end of my talk at our local Town Hall recently – “ We must stop abdicating responsibility for the future of our communities to the free market – Market forces are no judge of who or what represents appropriate repopulation”.

I am passionately against the creation of an unregulated free market in croft tenancies, although I do acknowledge that they have a capital value. Perhaps there is a role for the "Pre-emptive clause" piloted by the Highlands Small Communities Housing Trust, Where the managing agent, the crofters commission or the township would have the right to buy the croft lease and re-allocate it on the basis of social benefit at below market value, ensuring that the lease remains affordable in perpetuity.

I hope that the above outlines my perspective on some of the pertinent issues surrounding the extension of crofting tenure to cover areas of D&G and very much look forward to more in depth discussion at our meeting on the 3rd of May.

SUBMISSION FROM HAMISH JACK

I am both pleased and grateful to have once again the opportunity to bring our considered views and such facts as our Strathspey Crofters discussion group have aired over the recent months and, continuing problems as beset our agricultural future, both small unit holders and unregistered Crofters.

You will hold on record my paper to the Chairman of 30th December 2001 in which was noted some of the outcomes expected when the 'freeing up' of holdings by right of purchase, take effect. Our discussions have brought to light the '1905' 'Small Landholders Act' and although there are no such landholders within the Strathspey Valley it has been mentioned that there is in fact a limited number of such holdings present on the Isle of Canna and our group are delighted that these agricultural colleagues will enjoy this privilege in due course by virtue of this governments fair approach.

Counties of Crofting : We note too that as stated in the 'Green Paper' our government have expressed intentions to create new crofts not only in existing counties but additionally in Morayshire; parts of Aberdeenshire also parts of Banffshire.

Small Units : We have, within the Strathspey zone many small units lying cheek by jowl with registered crofts with many such crofts of appreciably larger acreage than adjoining neighbours yet containing a topography quite identical with the sole difference being that of a separation by no more than post and wire fence.

cont/..

- eans
esting : It is our contention that this situation is grossly
unfair with said units suffering a 'means test' by
the 'Agricultural department' added to which an
'Inland Revenue Supervision'.
- rants : If and when such small tenants as noted, are found
subsequent to official examination to be eligable,
they would, as we understand matters, become eligable
for the crofting grant for periods of up to 3 (three)
years.
We further understand that a government recognition
now prevails to the effect that such small units are
now deemed to have the identical economic standing
as is enjoyed by a Registered Crofter. We respect-
fully suggest that such units be placed on the
Crofting register and enabled to exercise the 'Right
to Buy' on the principal established at circa 15
(fifteen) times the established rental.
- ight to
uy : Once these people are granted such right to 'Buy'
it is our considered view, the 'Strathspey Crofters
Association', that said tenants will respond with a
substantial imput of funding in order to achieve a
level of security never previously enjoyed by them-
selves and of course their families.
As in our presentation of '30th December 2001', page
1 para 4 (effects) and para 5 (schools effects) and
of course a halt to population drift plus a notable
reversal.
- ew
nergies : Our discussions are clear in suggesting there will
follow a 'release of new energies' concurrent with a
dearth of much needed new ideas, previously stifled
for a variety of reasons again to the benefit of
local tax collecting authorities, jobs, families,
schools and attendant communities all as noted in
article - 30th December 2001, page 1 para 5 and page
2 para 3 and para 4 and 5.
- hops
ervices : The rapid benefits to shops and schools will be of
inestimable value.
- ct 1955 : This 1955 Act meant well as it did, yet resulted in
a real fear by older tenants ever mindful of
displeasing the Landlords/Factors; indeed a very
real concern as expressed at our meetings.
- andlords
ignature : We note with deep concern that Landlords are required
to sign the requisite papers for such units to be
registered, clearly, as we understant it, a con-
siderable drawback since such signings thereafter
preclude any right to buy. Thus we are faced with
an anomaly. Signatures for such units to be included
on the crofting register thereby precluding subsequent

cont/...

rights to 'buy' would seemingly nullify the suggested procedure. It is our urgent wish that under a wise committee a result of fair treatment will be reconciled, British Justice will prevail, a status quo must result.

astices

: Our government have made such progress to help improve our situation viz crofting, landowning, over recent years of office and we fervently pray that once again a sense of justice in our pleas will prevail for so many agricultural workers, who in the Highlands in particular, have battled the odds of weather, soil, short season and, landlords seemingly disinterested over the years, till once again we have our own concerned government.

^

Chairman.

Registration: My group, Spey Valley Crofters Association, contend, after in depth study, that Registration will have inestimable and beneficial effect on the Highland and Island population as a whole and the Agricultural Community in particular.

Maximum effect : Maximum effect will be best achieved if all Units are on the Register; that those, not presently on must be admitted. It is our strong contention that since all Crofts and Farms are cheek by jowl, generally co-operation with labour help and the sharing of expensive capital equipment, best harmony is achieved if we start with a level playing field, i.e. equal benefits for comparable opportunity.

Evidence of Benefits : Registration benefits are already proving their worth as for the first time in our farming history holders of units see the security obtainable via the 'owning' of 'homes' and 'holdings'. It follows that the physiological effect produces new interest and increased effort.

Effects : To clarify, effects that spring to mind:-
The resultant input of:
Fresh energies; higher disposable incomes to subsequent benefit of - 'Village shops', at risk 'Post Offices' and the multifarious services they offer an entire community; the 'Council Tax' being boosted; a steadying of drifting populations; new opportunities to encourage our better educated 16 to 22 year olds to stay put and apply skills in the area.

Schools effect : The inestimable benefit to our school population, halting presently declining numbers. Added benefit as new incoming populations bringing skilled and educated families thus boosting our present listing in the tables as - the most sparsely populated area in the entire EEC at 8 persons to the square kilometre (the norm being 22 to 70 plus) and a change to our existing population of circa 200,000 now showing a graph of imbalance viz a viz increasing 'Pension' age residents; 'Retiral' and 'Holiday' or weekend Homes.
Clearly these population statistics HAVE to be changed

(2)
if a healthy life style is to be achieved and the population drift reversed.

Registration : We urge our 'Elected Members' to arrange, by legislation or dictate, that Units presently not on the Register must be included.

Reason for Unregistered : We are well aware that some dissent to this can arise, with such comment as - 'They had their opportunity 1955.' To enlighten this view, directly from us as front line operators - many of us had (have) friends and relatives who were actively discouraged by Factors, Landlords and Lairds NOT to register, and consequently in fear of offending these owners, men declined to register. As noted earlier, the unit mix of Registered and Non Registered run side by side. A feeling of injustice will develop as Registered Owners properties will go forward as their less fortunate neighbours, at best, stand still. Our area can only prosper if the playing field is level, ready for what will be an exciting future.

Inheritance : The effect of the right to purchase is of multi proportion.

For the first time for many the right to inherit, applied to offspring and in turn their children, ad-infinitum, alone, will encourage populations to stay.

Extending Crofts etc : Couple this with Governments avowed intention to - Extend the area for Crofting Counties and to authorise the creation of New Crofts!

This will, we consider, match and strengthen the changes requested, urged, viz Registration, i.e. population boost.

Evidence : Our thoughts are backed by ample evidence shown by the incredible response to the bold initiative as to Balmaccara and Orbust (Skye).

The Members will have ample evidence of other such benefits within some constituencies.

The Balmaccara and Orbust projects resulted as is known, with a world wide interest both from families desparate to return to Scotland added to which a raft of applicants ready to bring young families, fresh capital, new ideas for diversification to name but a few.

Effects : The effects on junior through to senior schools is clear. The diversifications that will follow too will effect in beneficial ways such as 'Service Industries', 'Apprentice' opportunities and 'Technical Colleges'. The genie is ready to burst out of the bottle and, Chairman, only needs our representatives to pull the cork.

Anomalies : My group studies have anticipated the arising of certain anomalies and some pitfalls. We are of the considered opinion that a select committee of 'MSPs' ably assisted by their 'Civils' and hopefully including a representative

body of front line experienced hands will readily devise agreeable answers.

The rewards are too great for unresolved dissention.

Right to
Purchase

:It now follows that Long Sitting Tenants (my own family for example have 300 years farmed and crofted in the Valley) must be granted - 'A Right to Purchase! what will then become their own homes and holdings.

Basis of
Purchase

:We strongly urge that the basis of the right to purchase must be on the long established practice, that some more fortunate have enjoyed i.e. of fifteen times the annual rent.

We remind the Committee, Chairman, that over the generations, Crofters and Tenant Farmers alike have won back land from the Hill and made it produce, irrigated, cleared the rocks and rubble, cleared the bramble and filled the gullies creating the 'Picture Book' landscape in so doing that had a bonus effect on number 'One Industry (presently in decline outwith BSE and Foot and Mouth problems).

We too have lived in the shadow of the 'Big House' whose principal benefit to the 'natives' was for the womenfolk to act as chambermaids and house help - for the menfolk to be labourers on the estate or at best ghillie or gamekeeping work. The top jobs were for imported personnel who were all too often unaware of the varying weather patterns to be encountered, the climate and seasons and the population needs.

The owners were engaged in the pleasure industry, the shooting, fishing, and partying.

The estates were no more than a splendid playground for the rich from wherever.

To secure our own homes and units has been a driving hope for generations, a dream that can now come true.

Community
Purchase

:We come to the listed proposal of 'Community Purchase' and bring in the strongest terms a view from the front that may well have slipped the consideration of the legislators, it being far simpler to use one brush to cover the whole. As working agriculturalists we must make you aware of the problems attendant on a generalization on Community Purchase projects even though the idea reads as sound and innovative.

Chairman it 'aint'. The Valley for example is 'long', and topographically hugely varied.

Population scarcity is a point to consider, we have already highlighted the 8 persons to the square kilometre but even less in parts of Highlands and Islands. Such a spread has inevitably resulted in a rugged individuality of people, men and their womenfolk too. Such a scene will not lend itself to Community holding though we grant that there are areas for whom this will work. We ask therefore for a varied approach and not a 'blanket' policy.

We put forward long held views on the unfairness brought about by foreigners, meaning overseas people, - who are buying large estates with money sourced from where we have no knowledge. Our EEC neighbours are far more careful in this regard. Again Chairman a level playing field

please.

As a corollary Sir we object to the proposal that Owners, be they Laird or Landlord, can decide who buys a plot during land sales. You should know of our strong objection on this.

Throughout UK many of our traditional industries have declined or gone out of existence as progress continued apace.

Mining: Textiles: Steel: Shipbuilding all, more or less, gone. On the other hand the worlds oldest industry struggles on helped by wise administrators who have seen that this is one industry that has always operated to the 'Public Good' and not for 'Investor Profit'.

CCAGS

:We wish to note the CCAGS scheme as yet a further benefit that offers large effects where it applies. Those presently in receipt of CCAGS will readily confirm the inestimable value of the scheme. We consider that CCAGS can be readily extended and to great benefit. Benefits will follow immediately and unlike most schemes places NO demand on Government for financial 'Input'. The money is available and in place via application to the Department of Agriculture plus it is supervised by the trusted 'Crofters Commission'. Units presently in receipt of CCAGS are advantaged. Units not in the scheme can be readily inducted by a 'Simple Act of Amendment' which can effectively apply to units once in CCAGS, as also units designated for future inclusion.

CCAGS
effect

:Without question all such add impetus to make a promising future for present and future Highland and Island populations.

Registered
follow up

:Once units are in receipt of 'CCAGS' we contend (again the quoted playing field) should be inducted onto the 'Crofting Register Scotland'. Now can follow an activity of diversification such as camping: caravans: forestry: leisure sports: golf: driving ranges for 4X4. Again the spin off effect on visitor attractions, our future number 'One' Industry.

Dying
Industries

:We have followed the history of dying heavy industries in our land and remarked how the central belt so decimated, recovered with the introduction of 21st Century Electronics and substantial incoming capital. It is none the less depressing to register that this most modern of industries has now too fallen into long term recession yet nothing has been devised, this time, to replace lost firms.

We have watched with even deeper interest the lifting to that of a Tiger Economy in Ireland by route of huge EEC capital input - grants and investment. What was a few short years ago a basket case has become Scotlands greatest competitor for golfing holidays and tourism. We contend that Registration in concert with the other

benefits will rejuvenate our situation. Worthy of note is how the well educated expatriate Irish graduates have returned home from highly paid posts in Canada, USA, Australia and the EEC too. See Ireland and view the miracle of benefits accruing, all ready to take the place of grants and subsidies planned for phasing out in a few short years - a situation that, as yet, we have no plans to match. To offer equivalent attraction will depend on Land Reform and, Registration in particular, and of course at far less capital 'Input' from 'State'.

The regular conversations we 'Crofters' have with our 'Bed and Breakfast' clients have made us extremely conscious that this vital diversification is on a decline over the past three years as is the Holiday Home occupation. Conversations that have highlighted the growing strength offered by our competitors Ireland, and its newly found affluence and energies. We have no option but to emulate their pattern of success. An area to be investigated by Government must surely be to instigate a programme aimed at the potential of office and homes for the professions for whom, with communication of the 21st Century, no longer recognize distance as a problem. These people in particular are 'green motivated' and seeking to live in areas of clean air: clean water: clean land: low crime rate: beautiful scenery: loved landscapes. The target thus is - Architects, Designers, Authors, Writers, Language Schools, Artists, Creative people able to work easier knowing their children can play and grow in safety and in inspiring surroundings. Having referred to our population statistics we note again that in this time of year on year increasing costs viz Council Members, our MPs and the huge support staffs, the range of Public Service personnel and of course the extra requirements resultant to our climate. This is no complaint but an observation that gives realization that a slowly declining population presently, as noted, a mere 206,000 souls including a high percentage of retired residents, urge the introduction of such schemes as my group have put before you! Chairman.

Over the centuries we agriculturists have been adept at 'Spreading Muck'. We have an opportunity to 'Spread Hope' with Government help. 'Spread Hope' and one spreads wealth and new seeds of prosperity.

Anomalies
Pit falls

:We recognise the many anomalies and pit falls to be overcome following such rejuvenation plans. We are not deterred however since to stand still or worse to do nothing spells irreversible decline.

A study group by our Members and the 'professional 'Civils' assisted by an input from the 'front line'.

experience we 'crofters' and 'farmers' can supply, will overcome these relatively small problems. We refer of course to the need to clarify presently unfair situations present, and anticipated, as Crofts cheek by jowl with both registered and unregistered units, some larger than neighbours with a detrimental lack of balance.

National
Park
Funicular

:Account had been taken of the beneficial effects to the Highland population of the installation of the 'Funicular' and the forecast of visitor attraction. Note too has been made of the development of the 'National Park' and the many benefits this will bring. We contend too that the scenery offered by improved Crofts will complete the Highland scene. Dartmoor - The Lakes - The Yellowstone all contributed at once to local benefits.

Produce

:We have identified markets for our produce, customer liason shows they are anxious and waiting for our products which will be traded under a head of:-
Croft Fresh: Highland and Island produce from -
Clean Air - Clean Land - Pure Water - Naturally
Organic.

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

3 May 2006
ERD/S2/06/14/1g

SUBMISSION FROM FORESTRY COMMISSION SCOTLAND

Background

1. Forestry Commission Scotland (FCS) serves as the Executive's forestry department, advising Ministers on the development and delivery of forestry policy, carrying out regulatory and grant-aiding functions and managing through its Agency, Forest Enterprise Scotland, the national forest estate owned by Scottish Ministers. FCS is part of the GB Forestry Commission, a cross-border public body, operating in Scotland, England and Wales.

2. The national forest estate is 669 000 hectares or 8.5% of Scotland's land area, of which 463 000ha is wooded land. Much of the open ground has very low agricultural value and there is little improved grazing close to existing settlements. A portion of the national forest estate lies within the crofting counties. A map of the national forest estate is attached as Annex A.

3. A review of the land managed by Forestry Commission Scotland was carried out in 2004. Ministers accepted the recommendations, including: **"Forestry Commission Scotland, SEERAD and the Crofters Commission should jointly examine whether, and how, national forest estate land might be used to create new crofts under the crofting legislation"**.

4. A steering group was formed to consider this issue and reported to Forestry Commission Scotland. Following this work the Deputy Minister for the Environment and Rural Development asked Forestry Commission Scotland and the Crofters Commission to take forward proposals for woodland crofts on the national forest estate.

An overview of this work is set out below together.

The woodland croft's steering group's work

5. The woodland crofts steering group was made up of representatives from Forestry Commission Scotland, the Crofters Commission, SEERAD, the Scottish Crofting Foundation, Highlands and Islands Enterprise and Bill Ritchie from the Assynt Foundation. The group's report can be found at www.forestry.gov.uk/woodlandcrofts.

Key features of woodland crofts

6. Woodland crofts could range from being mainly woodland to mainly agricultural with a woodland element. They link housing, local rural livelihoods and woodland management. Key features include:

- affordable and sustainable housing;
- the use of biomass for heat;
- retention of land and housing by the community; and
- broad-based community involvement and support.

7. Woodland crofts have the potential to stimulate activity through:

- providing sites for homes and businesses;
- deriving new products and benefits from the woodlands such as individual and community wood-fuel heating, as a result of local, more intensive management; and
- generating enthusiasm for woodland development and management on both an individual and communal basis.

The National Forest Land Scheme

8. Since June 2005 Forestry Commission Scotland has managed the National Forest Land Scheme which gives communities and others the opportunity to buy national forest land where they can demonstrate they can deliver additional public benefits. Details of this Scheme can be found at www.forestry.gov.uk/nfls.

9. On the assumption that the legislation as enacted will contain a provision allowing for the creation of new crofts, the National Forest Land Scheme will be the route by which communities can apply to buy national forest land to create woodland crofts. We will amend the Scheme Guidance to take account of this new opportunity.

10. As with current applications under the National Forest Land Scheme, it is for the community to put forward their case demonstrating additional public benefit. The impetus to develop projects and solutions will rest with community initiatives rather than imposing ideas from outside. It is anticipated that the strongest applications would be for woodlands near existing crofting townships.

11. Under the National Forest Land Scheme, as per Community Right to Buy, land for woodland crofts would be sold at market value.

Opportunities for the creation of woodland crofts

12. Woodland crofts may encompass housing, communal woodlands and woodland for individual working. In different locations, national forest land may be suitable for some or all of these purposes. Community bodies may use existing land already held within the community, seek to buy land in private ownership that has come up for sale or apply to buy national forest land to obtain the land needed to create new crofts.

13. It is envisaged that woodland crofts would be created by a community body that has purchased national forest land. This community body would become the crofting landlord. However, community bodies may propose models of land and property holding that provide the benefits and safeguards required but that does not make use of the system of crofting tenure.

14. Provisions in the bill allowing the crofter to renounce their right to buy or assign their tenancy and binding their successors to this agreement will be important in ensuring that the croft remains within community control.

15. There may be value in ensuring that there is a link between any housing and associated land.

16. Woodland crofts may represent only one part of a community body's proposals for national forest land. The community body may have identified a number of needs and opportunities to be realised through the purchase of national forest land. These may include communal woodlands for the local community, affordable housing, and other opportunities for diversification.

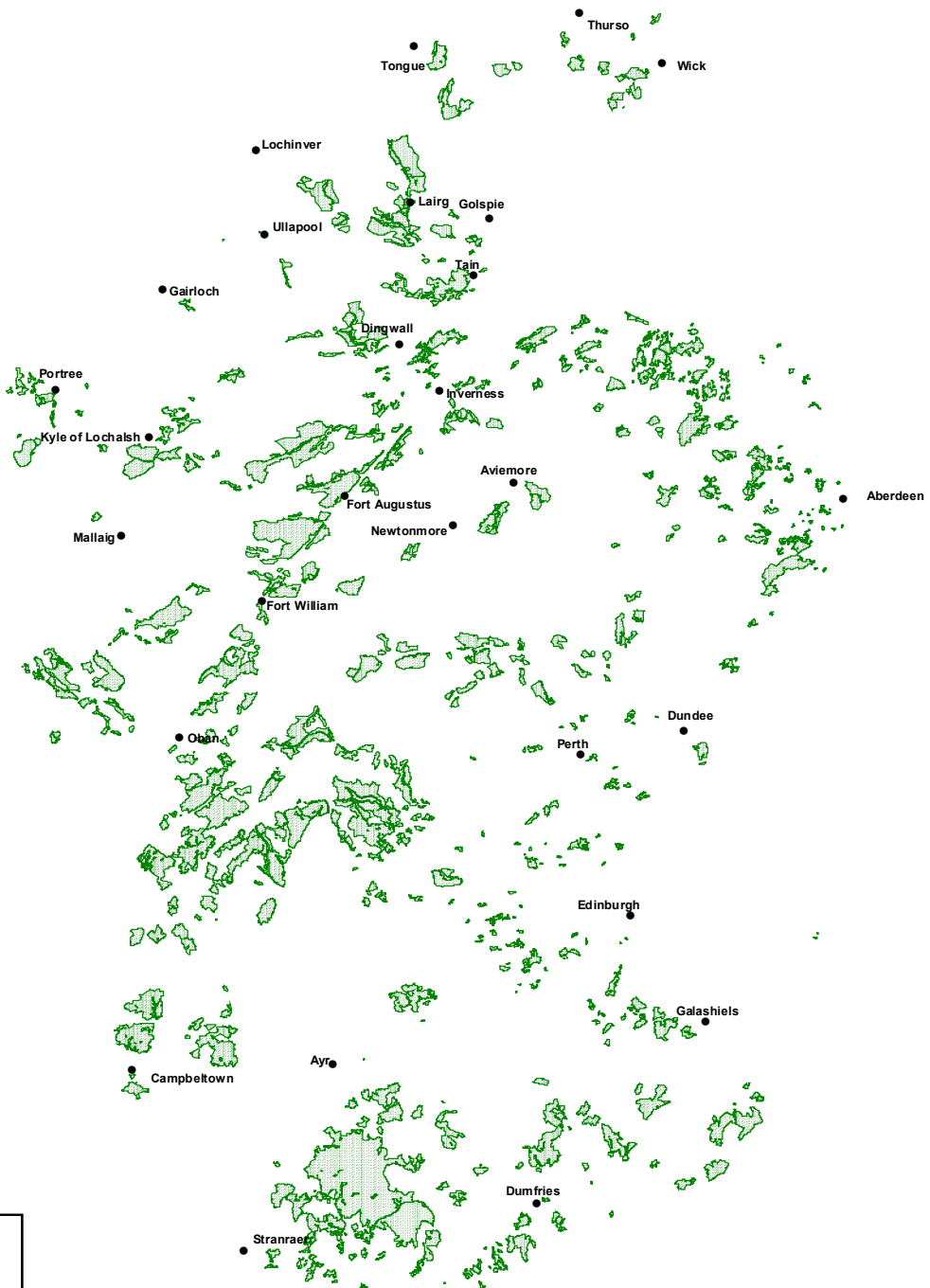
Affordable and sustainable housing


17. Under the National Forest Land Scheme, Forestry Commission Scotland makes land available for housing to housing associations and other appropriate housing bodies such as the Highland Small Communities Housing Trust.

18. It is desirable to have mechanisms in place to ensure that any housing built as part of woodland crofts should remain in the affordable sector. It will be for community bodies to propose mechanisms that offer the greatest safeguards. Such mechanisms could include Rural Housing Burdens, shared equity schemes or rights of pre-emption. Where community bodies provide rented housing, mechanisms that protect the homes from tenants having a right to buy may be important.


19. The planning authorities will have an important role in the development of woodland crofts and issues surrounding the provision of local services and water will be important.

THE NATIONAL FOREST ESTATE




Forestry Commission
Scotland

Legend

-  The National Forest Estate
-  Unitary Authority Boundaries

© Crown copyright. All rights reserved.
Forestry Commission. 100025498. 2006.

Agenda Item 1

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/1h

SUBMISSION FROM SHETLAND ISLANDS COUNCIL

1. Summary

Shetland Islands Council welcomes the introduction of the Crofting Reform Bill, and feels that there is a great deal to be recommended therein. With specific reference to issues pertaining to Shetland itself, there are three key points of particular note which should be recognised at this stage, and will form the basis of the oral evidence to be delivered on Wednesday 3 May 2006:

- Provision for the creation of new crofts
- Proper occupier status
- Adoption of local policies

2. Creation of new crofts

- Shetland Islands Council welcomes the proposed ability to create new crofts. From a rural development point of view, this ability to create new crofts holds enormous potential for ensuring that crofting communities throughout Shetland remain sustainable; population drift from rural areas to Lerwick or beyond is a real and ongoing problem that Shetland Islands Council wish to address.
- The creation of new crofts could provide a valuable tool in this regard, as young families in rural areas would finally have an option available to them to remain in a locality where they feel their roots lie, and moreover to do so with the ability to engage in small-scale agriculture. The social and economic benefits from such an opportunity are exceedingly attractive for the Shetland community as a whole.
- Practically, new crofts could be created from either land that is currently non-croft public land, or from larger existing crofts that could reasonably change into two or more economically viable crofting units.
- The ability for a new crofter to enter into an agreement with their landlord to opt out of the traditional crofter's right to purchase or assign croft land will be a vital component of the process of new croft creation. It is essential that this agreement be binding on successive crofters.

3. Proper occupier

- Shetland Islands Council welcomes the introduction of the proper occupier status; it is important that owner-occupiers be recognised as having every bit as much importance as tenants, insofar as they live and work on their croft, and failure to do so runs the risk of the Crofters Commission imposing a tenant upon them.
- Absenteeism needs to be treated with the utmost vigour, and likewise the issue of multiple croft occupancy – both practices are entirely negative in their outcome for crofters and their local economies.
- Furthermore, proper occupiers should have the same access to Crofters Commission grants that tenant crofters enjoy – the imposition of means-testing on owner-occupiers is an anachronism, as tenant status is no guarantee in itself of financial need.
- All crofters, be they owner-occupier or tenant, should have equal and unconditional access to grants pertaining to crofting.

4. Local policies

- Shetland Islands Council welcomes the ability to develop a framework for local area policies to resolve local issues. There should be recognition that different parts of the crofting counties are regionally distinct, and are subject to different issues and imperatives. The ability to focus local policy to local issues will therefore allow for more streamlined and effective service delivery.

SUBMISSION FROM AGNES LEASK

Through my work as Joint President of the Shetland Area Scottish Crofting Foundation and also as a Crofters Commission Assessor, I am in close contact with crofters.

Free market

The perception from crofting communities is that the Bill in its present form will destroy crofting. If crofts are deemed a freely marketable commodity going to the highest bidder it will be the end of crofting as young people and those who genuinely want to croft can't compete against speculative developers.

Regulation and democracy

The Crofters Commission is expected by crofters to be the body at arms length that protects and regulates crofting. There is concern that shifting a lot of regulatory responsibility to grazings committees, without requiring greater levels of accountability will cause ill-feeling in local communities and will be an additional burden on people's voluntary time.

Crofting communities want elected assessors with local knowledge and experience to remain as at present, not appointed panels with no local knowledge. This should be combined with democracy right through the system starting with elected Board members.

Planning

The Crofters Commission has always been recognised as the Authority to protect Crofting, therefore the final say over building on croft land should rest with the Crofters Commission. It is the Crofters Commission who should decide whether and where houses are built on croft land, not the Local Authority who often have little knowledge or interest in the beneficial role of crofting to the economic viability of rural communities.

There are a few good points in the Bill but on the whole it's seriously flawed and does not deliver much for crofting. Whether or not it should be scrapped in its present form is causing much discussion in the crofting communities. There is a real need for crofting legislation to address many issues in crofting – can this Bill be fixed to address them?

SUBMISSION FROM SIR CRISPIN AGNEW OF LOCHNAW BT QC

General

1. I have been asked to give evidence to the Committee regarding the Crofting Reform etc Bill.
2. These comments raise some issues, which I respectfully suggest that the Committee might like to consider.
3. I have made reference to sections of the Crofters (Scotland) Act 1993 including sections to be introduced by the Bill, rather than making reference to the Bill, because the intent of the various sections I have discussed are better seen in the context of the draft produced by SEERAD March 2006 of the “Crofters (Scotland) Act 1993 (c.44) as proposed to be amended by the Crofting Reform etc. Bill”. Where a proposal in the Bill does not affect the 1993 Act, I make reference to the Clause in the Bill.

Issues for consideration

Crofters Commission

4. The Crofters Commission is to be “a body corporate” and “shall not be regarded as a servant or agent of the Crown” and yet the Crofters Commission is to be a tribunal subject to Tribunal and Inquiries Act 1992¹. This appears to me to raise significant constitutional issues, in that this is the first example of a “privatised” judicial body since pre 1747. In constitutional theory all justice flows from the Crown, but in this case first level crofting justice is to flow from a “body corporate”.
5. I also note that the Chief Executive of the Crofters Commission has been the civil servant responsible for the Bill during its passage through the Scottish Parliament. This may raise issues regarding the impartiality of the Crofters Commission as a tribunal while he remains Chief Executive. In *Davidson v Scottish Ministers (No. 2)* 2005 SC(HL) 7 the House of Lords held that Lord Hardie could not be seen as a fair and impartial judge in the particular case, because that case concerned the construction of a statute that Lord Hardie, as Lord Advocate, had been responsible for seeing through Parliament and he had given Parliament assurances as to the meaning and intention of certain provisions in the Bill. While every case will turn on its own facts, I can see this as an issue being raised by applicants before the Crofters Commission.

¹ Tribunal and Inquiries Act 1992 Sched 1 Pt II “Tribunals under the Supervision of the Scottish Committee.

The status of Crofts

6. I am pleased to see that section 3(1)(f) & (g) of the Crofters (Scotland) Act 1993 now provides that if a croft has been on the register for at least 20 years that its status will be unchallengeable. This will avoid the numerous challenges that have taken place regarding the status of holdings, when research has to be undertaken as to the status in 1886 and/or 1912, because those were the dates at which crofts were, in general, created or thereafter could subsequently lose their status.
7. However, there is a constant problem in the crofting counties relating to land that has not been used by a crofter or apparently under crofting tenure for many years and yet when a sale of the house or land is proposed a crofter often “emerges” claiming that the land is part of a croft or the common grazing. The problem is that if land was once croft land it can never lose its status unless resumed by the Land Court or de-crofted by the Crofters Commission.

This then involves extensive researches back to 1886 to see if the land was in fact ever croft land and so a sale is delayed or frustrated. This causes considerable conveyancing difficulties in the crofting counties, because buyers can never be certain that land, which is apparently unused for crofting, is not subject to crofting tenure.

Examples include *Murray v Smith* 1991 SLCR 106, where the landlord had to resume a shed, which had been occupied by the estate and not by the crofter for about 100 years; *Trs of Sir GCDs Dunbar v Crofters Sharing in Winless Common Grazings* 1994 SLCR 89 where the Land Court authorised resumption of 28 acres of the common grazing to regularise the position as those acres had been used as part of the neighbouring farm for about 40 years.

May I suggest consideration be given to including a converse provision to the effect that any holding that has not been on the Register for 20 years or any land that has not been used as part of a croft or common grazings for at least 20 years shall not longer be croft land. If this is accepted an amendment might be required to section 53 of the 1993 Act [Land Court jurisdiction] to give the Land Court jurisdiction to determine whether or not such land has not been so used for 20 years and therefore is not under crofting tenure.

New Crofts & Landholding under the Small Landholders (Scotland) Act 1911

8. I note that in certain areas designated by the Scottish Ministers, that landholdings and statutory small tenancies under the 1911 Act can be converted to crofts.
9. This will still leave landholdings and statutory small tenancies under the 1911 Act in limbo, where they are not in a designated area or they exceed 30 hectares. Crofters have a right to buy and agricultural tenants now have a right to buy under the Agricultural Holdings (Scotland) Act 2003. It seems inequitable that those tenants of landholdings and statutory small tenancies under the 1911 Act, who are, after all also agricultural tenants, do not have a right to buy similar to that given to agricultural tenants under the 2003 Act. I raised this in my submissions to the Committee considering the Agricultural Holdings (Scotland) Bill (2003).

Rent

10. There is no provision for the Land Court to fix the rent at the commencement of a crofting tenancy. It would be useful to have a provision that parties, by agreement, at the commencement of the lease can ask the Land Court to fix a fair rent or for the Crofters Commission to be able to ask for a fair rent to be fixed when they are ordering a re-let of a croft.

Intestacy

11. Under section 11(2) [as to be amended] of the Crofters (Scotland) Act 1993 on the death of a crofter, if the executor has not informed the landlord of a transfer within 12 months, then the landlord has to inform the Crofters Commission. Frequently a landlord will not know of a death and will therefore not know if the 12 months has passed – I suggest that this should be a duty on the executor and, possibly also the landlord. The executor will know of the death and whether or not he has intimated a transfer.

Purchase of crofts

12. Under section 17(4) of the Crofters (Scotland) Act 1993 where the landlords are the National Trust for Scotland, the Land Court has to have regard to “the purposes of the Trust” in deciding whether or not to authorise a sale to the crofter. As there are now other bodies, such as the John Muir Trust, active in the crofting counties and owning croft estates, may I suggest that consideration is given to amending this provision to allow the Scottish Ministers to designate other bodies owning croft land to whose purposes the Land Court should have regard, when considering a purchase application.

Cottars

13. The definition of cottar [section 12(5) of the Crofters (Scotland) Act 1993] is:

“the occupier of a dwelling-house situated in the crofting counties with or without land who pays no rent, of the tenant from year to year of a dwelling house situated as aforesaid who resides therein and who pays therefore an annual rent not exceeding £6 whether with or without garden ground, but without arable or pasture land.”

14. The effect of this definition is that it applies to any house in the crofting counties, whether or not it is in a village or town or even in the City of Inverness. Therefore anyone who lets someone else stay in their house in the crofting counties for free or for a rent of only £6 per annum, is vulnerable to the “cottar” exercising a right to buy under section 12. I am sure this is not the intention and now might be a time to amend the definition of cottar to make clear it applies only to houses within a crofting township or on a crofting estate.

Crofters right to share in value of land resumed

15. Section 21(1A) authorises any payment of a crofter’s right to share in the value of land resumed to be made by instalment. The amendment does not make clear if instalments are due and payable to the crofter at the time the land was resumed or if payments relate to the croft, so that a successor crofter becomes in right to the future instalments.

As it is the crofter who is entitled to a one off payment on resumption, it seems reasonable that instalment payment should belong to that person, whether or not the remains crofter. However, the situation needs to be clarified.

16. Similar comments apply to the compensation provisions under section 19A "Schemes for development".

Reversion of resumed land

17. Section 21A of the Crofters (Scotland) Act 1993 authorises the reversion of resumed land to be croft land. It would make matters clearer if the section made clear whether or not it relates to land resumed before the Bill became law; ie in section 21A(1) by providing either "and order that land resumed, after the passing of the Crofting Reform etc (Scotland) Act 2006 ..." or "and order that land resumed, whether before or after the passing of the Crofting Reform etc (Scotland) Act 2006,...".

The allow this section to apply to land resumed and taken out of crofting, prior to the passing of this Bill, would invoke Article 1 of the 1st Protocol of the European Convention on Human Rights [ECHR], because it would in effect be putting land into crofting and so be a deprivation or control on property that was free of crofting prior to that date under Article 1 of the 1st Protocol.

Register of Crofts

18. Section 41(2)(ce) allows "any other order ... of theirs" [ie the Crofters Commission] to be recording in the Register. It would be helpful to have a provision that the Commission can enter any other information that they consider relevant to the croft in the register. The Act will have to authorise such entries and there is no provision allowing that at the moment.

For example there are often decisions of the pre 1912 Crofters Commission, of the Land Court or the Congested Districts Board relevant to a croft. It would be helpful if these were noted in the Register as and when the Commission become aware of them.

Grazing regulations

19. Under section 49 of the Crofters (Scotland) Act 1993 a grazings committee may make regulations. As presently drafted, it is my opinion, that it is not competent to include in the Regulations a provision that the crofters sharing in the grazings should join in a stock health scheme. In the present day and age, there are advantages in stock being with various voluntary health schemes, such as the Sheep and Goat Health Scheme – the *maedi visa* scheme – which increase the value of stock.

Perhaps consideration should be given to making provision that if a majority of the shareholders agree to entering into such a health scheme that it will be competent to provide in the Grazing Regulations that all shareholders have to comply with such a scheme.

Use of croft for “a purposeful use” of the common grazing for other purposes

20. Paragraph 3(b) of Schedule 2 to the Crofters (Scotland) Act 1993 allows a crofter to use a croft for “a purposeful use”. Section 50B authorises the use of common grazings for other purposes, subject to the procedures being followed.

21. I can see circumstances where the crofters might want to use the croft or common grazings for some other purpose, but equally would like the protection of a limited company for running those purposes. Perhaps consideration could be given to making provision for the crofters to use their crofts or the common grazings for approved purposes, but through the medium of a limited company in which the crofters and/or their family are the majority shareholder.

For example suppose a crofter was operating a fish farming business through a limited company. The crofter allows the company to build and use a shed on the croft for the fish farming. There is an issue as to whether or not that is lawful, because the crofter is not using the croft for “a purposeful use”, but it is being used by the limited company. The same would apply to a common grazing.

Access to croft

22. Section 53B of the Crofters (Scotland) Act 1993 allows a crofter to apply for access to his croft from his landlord. No provision is made if this route is to be over another croft and often that is the only practical route. While there are provisions in Schedule 2 to allow the landlord to make or open roads and for compensation, it would be tidier if this section made provision for the Land Court to consider, at the same time, any impact on a croft of a new route by, for example, altering the rent or ordering compensation to be paid. This would save the affected crofter having to make separate applications to the Land Court under other provisions of the Act.

Permanent improvements

23. Schedule 3 of the Crofters (Scotland) Act 1993 allows for compensation for designated improvements. Paragraph 11 relates to “All other improvements which ... will add value to the croft as an agricultural subject.” [my emphasis] If a croft can be used for a “purposeful use”, perhaps consideration should be given to allowing compensation for improvements that “add value to the croft”, whether or not they are for an agricultural purposes.

Interposed lease

24. Clause 35 of the Bill amends the Land Reform (Scotland) Act 2003 to allow crofting communities to buy out interposed leases.

25. I am not commenting on the reasons for including this provision. All I would like to say is that it is very unsettling for advisers, that Scottish Acts of Parliament are being passed and then rapidly amended by subsequent legislation or Statutory Instruments because Ministers suddenly realised that something was omitted from the earlier legislation. This uncertainty is making it very difficult to advise clients and is, I am sure, very unsettling for developers, who are essential for the well being and economic development of rural communities.

Access to legislation

26. This Bill substantially amends the Crofters (Scotland) Act 1993. SEERAD has helpfully produced a copy of the 1993 Act with proposed amendments. Can I make a plea that when this Bill is passed that a consolidated Crofters (Scotland) Act is then passed to reflect the law as it stands after the passage of the Bill.

27. In Scotland it is very difficult for lawyers to get access to Scottish Acts or UK Act and Statutory Instruments that are amended by the Scottish Parliament or the Scottish Ministers. Such providers as provide Acts or Statutory Instruments in their amended form tend to do it for English legislation only, but it is harder to obtain up dated Scottish Legislation. This is perhaps a general issue that requires consideration in due course.

Agenda Item 1

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/1k

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

The Rural Affairs Sub-Committee of the Law Society of Scotland (“the Committee”) recently discussed the Crofting Reform etc (Scotland) Bill and had the following comments which they wish to submit to the Environment and Rural Development Committee:

Determination of Boundaries

The Committee previously commented on section 22, dealing with the determination of croft boundaries. The Committee is now content with the changes to this section in the draft Bill, which meets their previous comments.

Information held in the Register of Crofts

The Sub-Committee previously suggested that the nature and extent of the interest in the Register of Crofts should be shown and that there should also be a reference to any other occupiers in Section 7. The suggestions of the Sub-Committee do not appear to have been taken up.

The Sub-Committee discussed a situation which arises when crofting tenants have bought their crofts and become owner/occupiers. The Bill does not appear to deal with owner/occupied crofts. It may be that the owner would be expected to register when the croft is bought but this is not a requirement under the provisions. The Register should contain reference to the actual occupier of the croft. It should be made a requirement that the owner should register when the croft is bought.

In cases where there is a sub-tenancy as a matter of practice the Commission enter it on the register as a formal sub-tenancy. In other words provided there is a tenant registered then the sub-tenant will also show up on the register. The Sub-Committee approves of this practice.

Agreements/

Agreements binding successors to the croft tenancy

The Sub-Committee previously asked for clarification that an agreement would be binding on successors at all times unless agreed otherwise on the basis that any uncertainty is undesirable.

The Sub-Committee believes the current proposals cover these points and agreed with Section 11(b) of the current draft.

Circumstances in which crofter’s share of development value is derived from resumed land and payable by instalments

The Sub-Committee noted that the current draft allows for payment by instalments to the individual crofter at the time of resumption.

The Sub-Committee believes that instalment payments should be attached to the croft and should not be attached to the individual crofter. It is proposed that a provision should be included to this effect as it is consistent with the current commitment to sustainable communities and is in the public interest. This would allow money to be retained in the area of the croft.

Development scheme

The Sub-Committee previously expressed concern that at present the ability of any “interested party” to object to a scheme under Section 34(7) is too wide and suggested limiting the right to object to crofters involved and residents within the community. The Sub-Committee took the view that any concerns held by other parties could be properly expressed in the planning process. They are disappointed that the Bill does not meet this objection.

The Sub-Committee believes that the term “occupied” in the definition of crofting community in Section 41 should be clarified. There should be clarity about whether this term refers to those who have legal entitlement or merely physical occupation of the croft.

The term “township” in the same definition does not appear to be defined in any other way than that it has two or more crofts. The Sub-Committee would require further explanation of the reference to townships being registered with the Crofters Commission. They are not, so far as the Committee is aware.

Twenty years prescription

The Sub-Committee are content with the provisions of Section 25 provided that the relevant commencement date is three years after the commencement of the rest of the Act. This would allow time for any challenges to the registration of particular holdings be made in the same way as time was made available for the preservation of real burdens in the Abolition of Feudal Tenure etc (Scotland) Act 2000.

New crofts outside “crofting counties” (Section 10)

The Committee notes the provisions to allow those outside the traditional crofting counties to be able to apply to have their land designated as crofts.

In circumstances when the tenant is making an application to have his land designated as a croft there is no obligation on him to inform the landlord that he is applying. The Committee believes there should be a provision that requires the landlord to be notified.

SSI DESIGNATION FORM

SSI Title & No:	Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance: Edition 2, (SE 2006/44)						
Responsible Minister	Rhona Brankin, Deputy 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 Committee		Other Committee				
Purpose of Instrument	The purpose of this guidance is to draw attention to the entry into force of changes to the contaminated land regime.						

Laid Date	16 th February 2006	40 day date	26 th May 2006
1st SLC Meeting	18 th April 2006	20 day date	7 th May 2006
Lead Committee Report Due	22 nd May 2006	Other Committee Report Due	

SE Contact	Sam Anwar, ext. 44966
Committee Contact	Mark Brough, 85240

For SLC Use Only:

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

SSI DESIGNATION FORM

SSI Title & No:	The Sewerage Nuisance (Code of Practice) (Scotland) Order 2006, (SSI 2006/155)					
Responsible Minister	Rhona Brankin, Deputy 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 set out the best practicable means of assessing, controlling and minimising odour nuisance at waste water treatment works. It requires the implementation of management and engineering controls, defined in the Code, in order to fulfil this purpose.					

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	Duncan McNab, ext. 40393
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								

Agenda Item 3

**Environment and Rural
Development Committee**

3 May 2006
ERD/S2/06/14/4b

Subordinate Legislation Committee

Extract from 16th Report, 2006 (Session 2)

Subordinate legislation

The Committee reports to the Parliament as follows—

**The Sewerage Nuisance (Code of Practice) (Scotland) Order 2006,
(SSI 2006/155)**

1. The Committee noted that this Order breached the 21 day rule. It was not satisfied with the reasons given by the Executive for why this order could not have been made earlier.
2. The Committee asked the Executive for further explanation of this breach.
3. The Executive, in its response printed in the Appendix, expressed regret for the delay which was caused by the combination of complex technical issues and the need for a second consultation exercise which prolonged the preparation phase.
4. The Committee noted the response and the Executive's commitment to ensuring that the 21 day rule is generally respected.
5. **The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that clarification was requested from and supplied by the Executive.**

APPENDIX

The Sewerage Nuisance (Code of Practice) (Scotland) Order 2006 (SSI 2006/155)

1. On 28 March 2006, the Committee sought a further explanation why the above Order breaches the 21 day rule.

The Scottish Executive responds as follows:

2. As indicated in the Executive's letter to the Presiding Officer of 16 March, Ministers had given a clear commitment to introduce a statutory Code of Practice on sewerage odour nuisance by 1 April 2006. Indeed, this commitment was made by the Deputy Minister for Environment, Lewis Macdonald, during his appearance before the Environment and Rural Development Committee in December 2004 for Stage 2 of the Water Services etc. (Scotland) Bill, and reiterated in the subsequent public consultation on the draft Code.

3. 1 April was chosen to tie in with Directions which Ministers gave to Scottish Water in September 2005, which set out a number of objectives, including environmental objectives on reduction of sewerage odour nuisance, which will apply to Scottish Water as from 1 April.

4. Unfortunately, the delay was caused by the combination of complex technical issues and the need for a second consultation exercise which prolonged the preparation phase. This second consultation was in addition to the first full consultation between October 2005 and January 2006 and raised a number of fundamental issues which could not be resolved without detailed discussion between the major stakeholders who are part of the overarching Scottish Odour Steering Group. We were therefore of the view that because of the delay of about three weeks, complicated also by the Easter recess of the Scottish Parliament, it was appropriate for the Statutory Code to take effect from 22 April.

5. Regrettably, this self imposed timetable led to the technical loss of a day's Parliamentary scrutiny for which the Executive apologises. However, the Executive assures the Committee that it remains committed to ensuring that the 21 day rule is generally respected.