



Environment and Rural Development Committee

15th Meeting, 2006

Monday 8 May 2006

The Committee will meet at 2.00 pm in the Corran Halls, Oban.

1. **Declaration of interests:** The new member of the Committee, Richard Lochhead, will be invited to declare any relevant interests.
2. **Crofting Reform etc. Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Duncan Baird, Chartered Surveyor specialising in crofting, agricultural and community development;

Donald Linton, Argyll Mainland Representative and John MacKintosh, Member of Crofting Reform Working Group, Scottish Crofting Foundation;
Donald Macarthur, crofter, Isle of Tiree;

Panel 2

Lorne MacLeod, Director, Isle of Gigha Heritage Trust;
Ian Gillies, Tiree Factor, Argyll Estates;

Panel 3

Iain Turnbull, Property Manager for Balmacara Estate, National Trust for Scotland;

Ross Lilley, Area Officer, Mull, Coll and Tiree, Scottish Natural Heritage;
Nigel Hawkins, Director, John Muir Trust;

Panel 4

Audrey Martin, Senior Planning/Development Officer, Argyll and Bute Council;
Ken Abernethy, Chief Executive, Argyll and the Islands Enterprise; and
Maf Smith, Chief Executive, Scottish Renewables Forum.

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/S2/06/15/1a
Submission from Duncan Baird	ERD/S2/06/15/1b
Submission from Donald Linton	ERD/S2/06/15/1c
Submission from John MacKintosh	ERD/S2/06/15/1d
Submission from Tiree representative	ERD/S2/06/15/1e
Submission from Isle of Gigha Heritage Trust	ERD/S2/06/15/1f
Submission from Ian Gillies, Tiree Factor, Argyll Estates	ERD/S2/06/15/1g
Submission from National Trust for Scotland	ERD/S2/06/15/1h
Submission from Scottish Natural Heritage	ERD/S2/06/15/1i
Submission from John Muir Trust	ERD/S2/06/15/1j
Submission from Argyll and Bute Council	ERD/S2/06/15/1k
Submissions from Argyll and the Islands Enterprise and Highlands and Islands Enterprise Network	ERD/S2/06/15/1l
Submission from Scottish Renewables Forum	ERD/S2/06/15/1m

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1b

SUBMISSION FROM DUNCAN BAIRD

I note below my response to some of the key issues arising from the Draft Crofting Reform Bill:

Creation of New Crofts

I support the proposal within the Bill for the creation of new crofts. In particular I support the proposal to create the ability for the Crofter's right to buy to be removed from any such new crofts, should the landlord and tenant agree to do so. The right to buy is a significant disincentive to any landlord considering releasing land to create new crofts. The ability for landlords to remove the right to buy from new crofts will positively encourage landlords, including community landlords, to consider creating new crofts.

It is vital that the removal of the right to buy continues in perpetuity. This includes ensuring the Bill closes any potential loopholes, for instance where a new croft is subsequently subdivided the Bill should ensure the removal of right to buy binds on any such new crofts created.

There is considerable potential for encouraging the development of crofting with this ability to create new crofts. For this reason in order to see its successful and widespread implementation it should be a principle objective of the Crofter's Commission.

Common Grazings Committees

It is vital that all Common Grazings Committees are managed and operated in a democratic, transparent and open way. At present this is not the situation with many committees who operate in an undemocratic way with often a few dominant individuals dictating the entire operation and management of the township. This does not encourage the active participation of all croft tenants and is a barrier to new and young crofters becoming actively involved.

It is also apparent that many grazings committees are poorly run and administered. At present there are many grazings committees that have not agreed regulations with the Crofter's Commission. It is considered essential that Minutes of Meetings, accounts and financial information should always be made available to grazings shareholders. All meetings should be open to attendance by all grazing shareholders as observers. This transparent governance will become even more essential if the proposal to give Grazings Committees the powers of fund raising and borrowing within the Bill is enacted.

The management and operation of Grazings Committees should be regulated more strongly by the Crofter's Commission. This should include the following measures:

- A Code of Conduct for Grazings Clerks and Committee Members should be introduced.

- Introduction of a Best Practise Model Rules/Constitution for the operation of Grazings Committees. This would include the necessity of regular rotation of the members of grazings committees and office bearers including grazings clerks. Consider the adoption of rotation of office bearers on a compulsory three-year basis, to be elected by members.
- All meetings should have decisions and discussions recorded in Minutes to be circulated to all members.

Price of Assignations

The present position is that high prices are usually being paid for the assignation of croft tenancies. This high value is almost entirely attributable to the fact that the purchaser is aware that they have the right to buy the croft. If a key objective of the Bill is to avoid pricing crofts out of the reach of young crofters then some solution to this situation has to be identified, the status quo of retaining the present system is not considered as a viable option. The following points are detailed for consideration towards being incorporated into the Bill to help address the problem:

- Future assignation of croft tenancies will include the necessity to have a clause contracting out of the right to buy in perpetuity. These tenancies would have a clause within the tenancy similar to that required for any new crofts created within the Bill's provisions. The Crofter's Commission would be obliged to ensure this was a condition of granting the assignation consent.
- Include within the Bill a requirement of all proposed assignees to submit a five-year croft development and business plan. Ideally this plan would have a good strategic fit with the township development plan. This plan would be assessed in line with pre-decided criteria. The entire process would be open and transparent to everyone including publication of the assessment criteria. The Bill would provide for the Township concerned to work in partnership with the Crofter's Commission in this process.
- Vital that the progress of the development plan is closely monitored by the Crofter's Commission to ensure agreed objectives and aims are being achieved.
 - A condition of the assignation approval would be that the five-year development plan for the croft has to be delivered. The Bill would empower the Crofter's Commission with an obligation to terminate the tenancy where this condition has been breached.
- Offer an incentive to existing croft tenants to assign their crofts by way of an attractive outgoer's payment within the Croft Entrant Scheme.
- These measures, or similar, would address much of the inflationary pressures on croft values. In addition it would engage crofting communities in a much more proactive way in developing and maintaining a future for their township.

Role of the Crofter's Commission

It is essential that the Crofter's Commission is much more rigorous and pro-active in their regulatory role. I would consider it to be very doubtful that this is achievable without having staff specifically tasked with this role. It is difficult to picture how staff can perform a developmental and regulatory role without having obvious conflict in their responsibilities. It is therefore felt to be very important that this is taken fully into account as the Commission moves towards being a Non Departmental Public Body as the staff structure should reflect the need for staff tasked with specific responsibilities.

Economic Status Test

This test should be applied to all crofters, including croft tenants. This would ensure a much fairer and better targeted distribution of grant assistance within current and future grant schemes available to crofters. The financial threshold should be published to avoid applicants submitting applications unnecessarily.

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

8 May 2006
ERD/S2/06/15/1c

SUBMISSION FROM DONALD LINTON

1. Thank you for the opportunity to give evidence to this committee. I would like to draw the attention of the committee to one issue.
2. The recent case in Taynuilt saw a luxury housing development go ahead on good croft inbye land in spite of extensive local opposition and at least half a dozen young local people who would have been keen to take on such a croft.
3. Although this case made the headlines it is in no way an isolated example. What will the Bill do to address this? If this cannot be addressed by the Crofters Commission, acting in the knowledge that they will not be immediately overruled by the Land Court, then speculation on croft land will continue and crofts will be seen only for their development value and croft land use will be determined by planning authorities.
4. The concept of 'proper occupier' introduces a power of regulation on the use of croft land by an owner-occupier. This is welcome, although questions of definition – what is neglect, what is purposeful use etc - need to be considered to ensure that this is enforceable.
5. However, in the Taynuilt case, there were already regulatory powers available to deal with the fact that the owner was a long-term absentee who had not made use of the croft. The Commission already has a power to impose a tenant on him. Adding another power and another sanction is all very well, but will it be used to prevent speculation like this going on in the future?

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1d

SUBMISSION FROM JOHN MACKINTOSH

Supplementary to Scottish Crofting Foundation submission

Lochaber is on the fringe of crofting geographically. Less than 10 percent of land in the area is croft land. Nevertheless crofting makes an important contribution to the economy of the area.

In the briefing notes one respondent is quoted as saying that “80% of crofts are uncultivated or under-used.” This statement is probably true but cannot be substantiated because comprehensive objective robust information on crofting activity does not exist. The development of legislation for crofting will be based therefore on incomplete information.

Nevertheless, crofting is contributing well below its huge potential – both in its contribution to household income and in terms of public benefit. There should be an obligation enshrined in legislation placed on the Scottish Executive and the Crofters Commission to actively consult crofters and deliver a policy for crofting. It should not be delivered, as at present, as an add-on to a policy designed for larger agricultural holdings. The proposed legislation places demands on crofters to deliver over and above those placed on any other group in the community but there is no statutory obligation to reward crofters. It is negative.

Crofting as a land tenure system has some points in its favour. It provides security of tenure albeit with conditions which are not applicable to others, it makes some provision for the value of improvements to be left with the crofter at waygo and it provides for inheritance. However, it fails very badly on one vital measure of an effective land tenure system and that is in its effectiveness in creating mobility of people and resources. It is rare for crofters to move from one croft to another and just as rare for crofters to move between crofting and non-croft holdings. There is consequently a mismatch of people and resources in crofting which has undermined its potential.

It would appear that the register of crofts as held by the Crofters Commission is not a definitive record of the occupancy of crofts. The record should be the form of a proper land registry and managed as such in conjunction with the land-based system that has been demanded now for some time.

In Lochaber the most significant pressure on crofting is for land for housing and industrial development, particularly around Fort William and centres of population elsewhere in the area. The 1976 Act which gave the crofter a right to half the development value of the land has in fact protected croft land by diverting demand away from croft land to non-croft land in the recent years.

Some years ago the Scottish Crofters Union were advised that crofters are an indigenous people within the meaning of international treaties. The UK government had not signed up to these treaties and the civil servants were extremely resistant to such a proposal. There is no reason to suppose that has changed but the right of a people to self-determination has not. The demand of the SCF to have an elected board on the Crofters Commission is at least a start and should be pursued with vigour. Democracy and the right to self determination is also the only proper course of action at local level.

In 1998 a group chaired by a crofting law specialist with representation from the Crofters Commission, the Scottish Crofters Union, the National Farmers Union of Scotland, and the Scottish Landowners Federation drew up recommendations for a crofting reform bill. The contentious issue at the time was the multiple occupancy of crofts which was seen as undermining the main tenets of crofting, namely that it retains an active population in remote rural areas. Does the present Bill adequately address this issue?

If as is claimed, agricultural land is no longer being used as such, why is it still subject to the de-rating of agricultural property?

Finally, I make one very simple plea. The general tenor of the 1993 Act and of this Bill is that we should be grateful for the wee bit land that some generous benefactor, be it individual, quango or otherwise has given us. Really? Who else has broken in this land and where else are crofters supposed to be?

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1e

SUBMISSION FROM TIREE REPRESENTATIVE

Crofting Reform –Tiree concerns

Proposal to remove the requirement for the principal use of crofts to be agricultural. Livestock production and cultivation of the ground to support that livestock has shaped and maintained the landscape. Removal of the need for agricultural use will lead to an increase in wasteland crofts and increase in weed growth with detrimental effect on neighbouring crofts. Legislation to ensure control of weeds is unlikely to be enforceable.

A significant decrease in livestock numbers would have serious knock-on effect on the viability of facilities such as the auction mart. Tiree had a long hard struggle to obtain a modern auction market which opened in 2003. The island is renowned for its high quality store cattle and lambs and buyers come from all over Scotland and from Northern England to sales. There is however a critical mass required to make such a long trip worthwhile for buyers. There is already a tendency for livestock numbers to reduce because of changes to the support system - any further pressure is very unwelcome.

Tiree differs from many other crofting areas in that many of the crofters do not have paid employment along with the croft income and they are therefore entirely dependent on their agricultural income. Any threat to this income is therefore much more serious than in areas where the croft income is only a supplement to paid employment.

Similar concerns apply to the provision of veterinary services. A significant decrease in livestock numbers may threaten the viability of a local practice.

Proposals to allow a free market in croft tenancies. Local people are already priced out of the housing market in Tiree due to the enormous demand for holiday homes. A free market in croft tenancies would lead to the same situation applying.

Although there have recently been few tenancies advertised, there is a big demand from young local people and it would be detrimental to the community if wealthy semi retired Good Lifers can take precedence simply

because they can afford a bigger rent. The demand for housing means that a croft has a big potential value to someone who cares little for the land or crofting, but is looking to speculate by selling house sites. This is asset stripping.

Proposals to include the value of a tenancy in a deceased persons estate

This has the potential to create financial difficulties for the succeeding tenant if there are several siblings. It may create inheritance tax liabilities where house prices have become so over-inflated. Creating a large capital value for assets which yield a very low income does not make sense.

Including the value of the tenancy in divorce cases and cases where the crofter requires long term hospitalization or residential care would also create hardship.

It would be iniquitous if a crofter's tenancy could be sold to pay for this in cases where another family member was working and maintaining the croft.

It is the view of many crofters in Tiree that many of the current issues within crofting could be addressed within the existing legislation if the Crofters Commission were more willing to use the powers available to them. It appears that in many cases they take the easy option of doing nothing rather than acting in the best interest of crofting. Any legislation is pointless if not enforced.

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1f

SUBMISSION FROM THE ISLE OF GIGHA HERITAGE TRUST

We support the proposal for new crofts to be created. In particular we support the proposal to create an ability for the crofter's right to buy to be removed from new crofts, and for this to be binding on succeeding tenants, should the landlord and tenant agree to do so.

This will be particularly useful to allow community landlords to create new crofts and have them remain in community ownership in perpetuity, rather than risking losing ownership of the land to an individual crofter.

In addition, with regard to new crofts, there should be no opportunity for crofters to assign a croft to a non-family member.

Background note - The Isle of Gigha Heritage Trust

The community of Gigha were successful with their bid to purchase their island in October 2001, and established The Isle of Gigha Heritage Trust. The official handover of the island into community ownership took place on 15th March 2002.

Listed below are some of the key highlights since that date:

- Population has risen from 98 to 141 (+ 44%).
- Primary school roll has risen from 6 to 16.
- 8 new affordable houses completed – a further 10 are currently being constructed.
- 5 new private houses completed.
- 6 Trust owned houses have been completely renovated, with a further 3 underway.
- 8 new businesses been established.
- United Kingdom's first community owned, grid connected windfarm has been established.
- Vacant dairy farm has been let.
- Community owned hotel has been upgraded, and is now open all year round.

- 50 acre Achamore Gardens presently being restocked and upgraded.
- 3 craft workshops have been constructed and are fully let.
- £1,150,000 loan on purchase of the island has been repaid in full.

Crofting & Agriculture

Gigha has historically been a dairy farming island, and presently consists of 4 dairy farms, which have been enlarged since the buyout in an effort to increase milk production from 1.1 million litres to 1.8 million litres annually.

In addition, there are 2 registered crofts, and 2 smallholdings. The crofts are some of the most southerly situated in Scotland.

The Trust decided, at the time of the buyout, not to give a secure let on one of the farms on the island – South Drumachro. The land has been let on a seasonal grazings basis for the past 4 years, in anticipation of the new Crofting Bill, when the land will be considered for the creation of between 6 and 8 new crofts.

In considering whether to go ahead with the creation of the new crofts, it is an essential pre-requisite that there is an ability for the crofter's right to buy to be removed from the new crofts.

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1g

SUBMISSION FROM IAN GILLIES, TIREE FACTOR, ARGYLL ESTATES

Background

I have been employed on the Tiree Estate, (part of Argyll Estates), since moving from Inveraray in 1976. I am also the tenant of an 18 hectare croft. I am currently the Local Authority Councillor for the islands of Tiree and Coll and an ex.officio Justice of the Peace. I am a previous President of the Tiree Branch, National Farmers Union, and a previous Member of the NFU Crofting Committee. I have considerable experience of voluntary/community work on Tiree and elsewhere.

The Argyll Estate is a member of the Scottish Estates Business Group (SEBG), 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. SEBG has submitted separate written evidence to the Environment and Rural Development Committee on the Crofting Reform Bill.

The Argyll Estate includes 350 crofts, mainly on Tiree and the Ross of Mull. Its primary aim is to support and encourage sustainable crofting, doing what it can to encourage and facilitate new entrants to this traditional way of life.

Current day crofting and the impact of the Crofting Reform Bill

In recent years Argyll and the islands have become a "honey pot" with an upsurge in the numbers of people visiting the islands on holiday - over 1 million visitors this year through the Caledonian MacBrayne port of Oban. This has led to an increasing trade in whole crofts, part crofts, and house sites, or "house farming" which is providing second or holiday homes. The Estate's concern now is that the proposals contained in the Crofting Reform Bill, if implemented as set out, will encourage rather than inhibit the developing market in crofts and lead to the commercialisation of crofting.

Tiree is a good example of a practical and strong crofting community. There, the proposed legislation is widely regarded as unnecessary and unwanted. There is also a concern that the new proposals will commercialise crofting and legitimise the creation of open market values on croft tenancies which will unquestionably undermine traditional crofting practice.

The Depute Minister and Maureen MacMillan have both previously visited Tiree to see and hear at first hand the means by which traditional crofting sustains us as a community. Crofts on Tiree are generally small by Western Isles standards, typically on average 10-30 hectares, (25 – 75 acres), some larger, some very much smaller. Rents for crofts on Tiree have mainly been determined by a series of Scottish Land Court test cases, and percentage indexation is now applied to maintain the status-quo. The annual rent for my own croft at 3 Kirkapol, a good quality bare land 18.90 hectare, (47 acres for those like me who are metrically challenged), mixed arable/machair/sliabh holding is £140 per annum, which equates to £7.36 per acre. This would be a fairly typical annual rent for a Tiree croft of this quality. Rents on Tiree were last reviewed nine years ago in 1997 due to the downturn in agriculture. A review is now imminent.

The Estate maintains an active list of those interested in entering crofting. We are particularly interested in encouraging young aspiring crofters to enter the industry, although vacant crofts seldom come back into the hands of the Estate.

There is a general perception within the crofting community that the Crofters Commission is not as aware as it might be about the 'grassroots' feeling on the ground, with the well publicised Taynuilt case supporting the impression that the Crofters Commission is not as involved as it might be in the local planning process. A further verifiable example on my own island is the case of a croft that has lain vacant for some time because of endless red tape, together with attempts by the executors of the deceased previously absentee tenant to 'fully realise the value of the croft tenancy' by selling the tenancy. Although small, the croft would make an ideal starter for a young croft entrant, and indeed the Estate has had a young tenant ready to be installed in the croft for the last two years. Generally therefore, it is felt that the Crofters Commission is not carrying out its regulatory role as diligently as it might, and that without a tight regulatory rein being enforced, along with a practical and pragmatic approach to the everyday issues, then traditional crofting will increasingly be threatened by open market forces.

In the past, the Scottish Land Court has worked diligently to hold rents at artificially low levels in order to protect a traditional way of life. Landlords such as Argyll Estates understand and subscribe to this process and I have personal experience of almost thirty years of mainly harmonious relations with our tenants. However, if Government are now to intervene and adjust this delicate balance by encouraging an open market in croft land, with crofters able to turn their heritage into an immediate capital gain without thought for the long term future of crofting, then where will that leave those that want to continue their traditional way of life?

In Scotland, and the United Kingdom, we operate within a market economy, central to which is the notion of entrepreneurs. Croft land owners make available land for tenants to work as crofts. If those crofters buy out the land and then sell on to others in order to take money out of crofting, who then will be left to carry on the tradition, how will youngsters be able to afford to get that first step into crofting, and who will be prepared to continue to rent out land for crofting? Can we be assured that the 'new entrepreneurs' will be as willing as

current traditional landlords to offer land for rent to new tenants at current prices? I would hazard that the answer to this question will be no! The risk is that some years down the line, all that will be left will be hobby farmers – and absentee hobby farmers. While it is the case that crofters have been in a position to buy their own crofts since the 1976 Reform Act, the new proposals offer, in my view, a legitimisation of the concept of `croft land for profit', a concept that I have previously not witnessed.

There must be pause for thought before steps are taken and measures introduced which will bring irrevocable change to a tradition which has survived, thus far, for centuries. It may in fact already be too late, as the seeds of avarice are already sown.

SUBMISSION FROM NATIONAL TRUST FOR SCOTLAND

The National Trust for Scotland recognises that crofting is a significant and valuable part of the cultural and natural heritage of the Highlands and Islands. It brings considerable benefits to communities and local economies and has created and maintained valuable wildlife habitats and cultural landscapes. As landlord to seven crofting estates that contain nearly 200 registered crofts, the Trust seeks to promote thriving crofting communities as part of its wider support for the countryside and the conservation of Scotland's heritage.

Summary

Whilst we support a number of proposals in the Bill, we believe that there are fundamental problems both with what it proposes and with what is not included. The Bill does not sufficiently address the critical issues affecting crofting today (such as the lack of use of croft land, absenteeism, inappropriate development of croft land, multiple occupancy, the impact of the individual right to buy, and the transfer of croft tenancies at increasingly inflated prices). The Bill therefore fails to deliver its stated policy objectives and indeed runs contrary to the wider community interests in croft land, legislated for under the process of Scottish land reform and from which this Bill stems.

With its emphasis on development, diversification and the protection of individual rights, the Bill at best offers little to change to the status quo, and at worst accelerates the demise of the crofting system by failing to tackle poor enforcement of current regulations and by encouraging a free market in croft tenancies at the expense of the wider crofting system. This represents a missed opportunity for the Scottish Executive to demonstrate its commitment to the long-term sustainability of the crofting communities and their way of life. The Trust offers the following more detailed comments on specific aspects of the Bill:

Lack of Vision: The Bill lacks a clear vision for crofting. Without such a vision or shared understanding of what constitutes crofting in the 21st century, the Bill lacks direction and therefore a clear sense of the role and potential *future* benefits this system of land tenure might offer to both communities and the wider environment. Crofts have traditionally been *agricultural* holdings so any vision should reflect this link with the land which has underpinned crofting since its inception.

Regulation: Better regulation of crofting tenure is of paramount importance to the long-term sustainability of crofting communities. Many of the existing regulations are not enforced. This is widely recognised as a fundamental issue, yet the Bill offers no meaningful solutions. Further regulatory proposals, such as those proposed for owner-occupiers, are likely to suffer a similar fate unless the reasons for regulatory failures are properly addressed. It could be argued that the bulk of the existing legislation is not fundamentally flawed and is not in serious need of change. Rather it is the way in which the legislation is implemented and interpreted that needs to be reviewed. Existing controls on use of croft land ought to suffice to protect the future of crofting, but a lack of regulation and enforcement of the statutory conditions has meant that the legislation has been ineffective.

Tightening up on the regulation, perhaps with some clearer definitions and guidance for the courts and the Crofters Commission, for example on what constitutes proper use of croft land and absenteeism would probably be much more effective than this proposed legislation.

Land Reform: The Land Reform Policy Group laid down the five main objectives for this Bill in 2002 and the focus of legislation on land reform to date has been on *communities* and *access to land*. However, the opportunities opened up by the Land Reform Act, such as the Crofting Community Right to Buy, and the availability of finance from sources such as the Scottish Land Fund, are undermined by the Bill's *de facto* encouragement of a free market in croft tenancies and by its failure to dampen the effect of the individual's right to buy by regulatory means. Crofts are now being bought as house sites by those who have little interest in crofting and high prices effectively exclude local people from the market. This undermines fragile communities and weakens the ability of the crofting system to retain rural populations, a key element of the land reform agenda. By specifically allowing tenancies to have a cash value assigned to them, the Bill opens up the system even further to those seeking individual financial gain. Unless these issues are properly addressed, this form of tenure, with all its attendant benefits, will soon be unsustainable and break down altogether. Also, if an individual crofter is "encouraged", through improved regulation, to treat their responsibilities as a crofter seriously, or if they disagree with a wider community initiative, they can effectively override any wider interest simply by acquiring their croft. Thus an individual's rights appear to be paramount over those of the wider community. This is at odds with the Land Reform agenda. The concept of "Proper Occupier" may help to address this issue, but only with effective regulation. A simple solution would be to remove the right to buy, and only allow crofters to acquire their land when there is a genuine need to do so in order for a development to proceed, and where such development has clear community benefits and support.

'Proper Occupiers': It is disappointing that information on this potentially substantive amendment has only been recently made available to the public and that it is being introduced at Stage 2. The proposal that owner-occupiers of crofts would have to meet certain conditions regarding management and use of the croft is welcomed in principle, but will only succeed if properly regulated. We fail to understand why another layer of complexity is being added into the system when 'proper occupiers' could be made subject to the same statutory conditions of tenure that govern croft tenancies. The proposed new provision to allow a Proper Occupier to let any house or other building on the croft to holiday visitors (which matches the proviso to Para 6 of Schedule 2 to the 1993 Act enabling croft tenants to do the same) highlights the pressing need for greater regulatory control of such lets. Such activity is only adding to the acute lack of affordable housing and only serves to increase the value of crofts. At the very least such lets should be subject to the same conditions that cover 'purposeful use', thus ensuring they do not happen automatically but can be appraised in line with any local area policies and the wider community interest.

New Crofts: We support both the removal of legislative barriers to the creation of new crofts and the new provision which allows crofters to enter into agreements which are binding on their successors whereby a new crofter can agree not to exercise the individual right to buy. Clarity is however required as to whether any new crofting *township* created as a result of the proposed legislation will be entitled to instigate a Crofting Community Right to Buy under Part 3 of the Land Reform (Scotland) Act 2003. A landlord is more likely to agree to the establishment of a new crofting township if the proposed provision allowing an individual landlord to enter into a binding agreement with a crofter is amended to facilitate similar agreements being entered into with a *crofting community*. It is interesting that the Bill seeks to solve the problem of lack of access to crofts by creating new crofts as opposed

to freeing up the many under-used or completely unused crofts that already exist. While the creation of new crofts is to be welcomed as one means of resolving this issue, it is unlikely that it will lead to an overwhelming response by landowners, especially if the regulatory issues are not resolved. Therefore, it is vital that steps be taken to bring these under-used or unused crofts back into use and make them available to the many people who wish to obtain a tenancy and use it properly. The key factors in this regard are regulation and the right to buy.

Local Area Policies: We welcome the proposal to allow the Commission to set policies for separate local areas. This will introduce much-needed flexibility into the regulatory system and will allow the Commission to focus on specific priority issues within different townships and regions. However, this must not be allowed to act as a means for proper regulation to be circumvented because it is unpopular with elements of the local community. Clarification and guidance on what local policies can cover and how much they can deviate from the standard regulatory procedures are essential.

Definition of Crofting Community: There is a clear disparity between the definition of a crofting community in the Draft Bill and that in the Land Reform (Scotland) Act 2003 (Part 3 – Crofting Community Right to Buy); this may lead to conflict and should be resolved.

Conditions of Tenure: 'Fit for Cultivation': Whilst we welcome the proposed modifications to the conditions of tenure¹ that require a crofter to keep his/her croft 'fit for cultivation', the present requirement that a crofter cultivates his croft is not properly enforced. Concerns therefore centre round enforcement issues as well as those of definition. In relation to the latter we believe Section 11(1)(b)(2A) requires tightening up. This states that where a crofter is doing or not doing something to conserve the natural beauty, or the flora and fauna of the locality, he is not to be treated as in breach of the statutory conditions. This is too broad and may lead to a crofter claiming to conserve his croft by effectively doing nothing in the way of meaningful conservation. We are also advised that it would be legally very difficult to establish any case of irritancy with this clause as presently worded. We believe a crofter should not be in breach of his statutory conditions if he is carrying out conservation work as part of a *formalised programme*. Given the history of failed attempts to regulate the use of croft land, it is essential that the Bill delivers a workable and meaningful solution to this problem, and that it overcomes the obstacles to proper enforcement. The Commission must have a non-discretionary duty to enforce this aspect of the law.

Diversification and 'Purposeful Use': The current crofting system of tenure does not prohibit other forms of use of a croft beyond agriculture (as long as it does not affect the cultivation of a croft). Indeed croft land has been put to other uses on many occasions. The Trust does not believe the inclusion of a more explicit amendment to allow croft land to be used for other 'purposeful' uses will significantly alter current practice. If it is included in legislation, the envisaged 'purposeful use' must be robustly and clearly defined to ensure that safeguards are in place to prevent any further loss of crofting's traditional link with the land. The current definition needs to be tightened up. The Bill proposes that any use should not '*adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land [(Section 11(2)(i))]*'. This should be amended to state that the use '*relates in a tangible manner to the croft land in question and does not adversely affect the croft, the public interest, the interest of the landlord, the interests of the local crofting community (originally included in the White Paper), any local crofting area policies or the natural and cultural heritage of the area*'. The future stability of crofting townships will only be encouraged where similar objectives and management conditions are agreed by all

¹ These apply to croft land not being put to other 'purposeful' uses

involved and therefore such uses must be tested against a wide range of criteria. The Commission must also be notified of *all* proposals so that it can object when it deems such interests to be threatened.

Wider Use of Common Grazing: The proposal to enable wider use of the common grazings could have significant landscape and biodiversity impacts and therefore should be subject to the *same* safeguards as those proposed above under an individual crofter's application to diversify.

Energy Generation as a Reasonable Purpose: We do *not* support the proposed explicit designation of energy generation as a reasonable purpose under an application to resume croft land. The examples listed as reasonable under the Crofters (Scotland) Act 1993 are *not* exclusive and, given the often controversial nature of energy development projects, due and proper consideration of all the impacts of a proposed energy project by the Land Court and the local planning authority or Scottish Executive should not be pre-empted by the setting of a favourable precedent in law.

Development Schemes: Such schemes are unnecessary, as development on Common Grazings and croft land can be secured through partnership or Land Court approval of resumption of land. The draft Bill recognises that the key problems hindering development on croft land have already been addressed through amendments to the section on resumption. The fact that the resumption process 'remains complex and uncertain' for developers is poor justification for introducing this new measure, which appears to be driven by a political desire to 'facilitate' development. Crofting law is complex for a number of good reasons, and it should not be cherry-picked or weakened on the basis that it is perceived to act as a 'disincentive to developers'.

Division of Crofts: We believe that a minimum area should be set, below which no further sub-division of a croft should take place, and we further reject the proposal to remove the current requirement for the landlord's consent to any subdivision of crofts (to be replaced with a landlord's right of appeal). The reasons for this are inter-related. With the introduction of new measures allowing a crofter to diversify, the issue of sub-dividing a croft requires tightening up in order to avoid a croft being potentially sub-divided into a number of croft house sites. This proposal facilitates *easier* subdivision and therefore encourages the creation of smaller and smaller crofts for housing development. This undermines the long-term existence of crofting as a land-based system. We fail to see how subdivision can take place legally in the absence of the landlord's explicit consent, since such a move effectively creates new tenancies, and accompanying legal obligations for landowners, on their land.

Apportionment: We support the Bill's proposal to allow for apportionments to be time-limited. We also welcome new powers for the Commission to review apportionments, and for the apportioned land to revert to being part of the common grazing following such a review.

Map-Based Register of Crofts: We welcome the proposal that the Register of Crofts is to be map-based and that the form and scale of any maps provided are to be specified in regulations to be drawn up by Scottish Ministers. Any specifications should be consistent with those required when registering a title under the Register of Sasines.

The 'Kinlochewe Ruling': *In crofting circles it has long been recognised that a crofter's ability to nominate any individual as the new owner of a croft under an individual application to the Land Court for acquisition of croft land [(Section 13 (i) of the Crofters (Scotland) Act 1993] (known as the Kinlochewe Ruling) has resulted in an unintended legislative loophole. This allows a crofter who is disposing of his land to someone who is not a member of the*

crofter's family to avoid recompensing a landlord financially (if this occurs within five years of acquisition by virtue of the Act). The Bill should be used as an opportunity to address this. The Trust suggests that a nominee should be restricted to the definition of a crofter's family for assignation purposes as proposed in the Bill. If someone outwith this definition of the family is the proposed nominee, then the landlord should be entitled to 50% of the value of the land, as would normally occur under the claw-back rule.

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1i

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Thank you for requesting SNH's views on this Bill. We had the opportunity to comment on the Draft Crofting Reform (Scotland) Bill when this was open for public consultation in June 2005, following which the Executive invited us to discuss the issues we had raised, with the result that many of them have now been addressed in the Bill 'as introduced'.

General considerations

We support the broad aims of the Bill, which seek to make crofting and crofting communities more sustainable. The Bill recognises that there are potential benefits, both for crofting communities and for society more generally, in crofters making active use of their crofts and being involved in a wider range of rural development activity. We believe that a more active pattern of crofting also has an important part to play in providing the management needed to maintain the natural heritage, and in providing opportunities for people to experience and enjoy the countryside.

For SNH there are two important considerations: -

First, would anything in the Bill constitute a direct or immediate risk to the natural heritage?

We are generally satisfied that it would not - indeed it provides crofters with increased freedom to manage their land for the benefit of the natural heritage, by exempting them from the 'statutory conditions' wherever these may be at odds with natural heritage objectives (Section 11(1)(b)). Although it contains few other direct references to the need to protect the environment from development that certain provisions might permit or encourage, we are satisfied that any significant risks to the natural heritage would be covered by other regulatory controls, including Environmental Impact Assessment, planning regulations, the Nature Conservation (Scotland) Act 2004, Good Agricultural and Environmental Condition, and the conditions applied by the Scottish Forestry Grants Scheme.

Second, we are keen that the Bill should help provide a securer future for crofting as the basis for a system of small-scale and low-intensity land management that is associated with attractive landscapes and a rich and characteristic assortment of wildlife. How far it will go in this respect is difficult to tell. The Bill has to strike a balance between, on the one hand, increasing the range of economic opportunities for crofters in order to give them a more certain future, and, on the other, de-regulating crofting to the extent that it loses its essential characteristics as a land management system, and the benefits for the environment and for crofting communities associated with it.

While the Bill, intentionally, relaxes and simplifies some of the controls over the use of croft land, we consider the changes overall to be moderate and reasonable. On their own they cannot guarantee the future of crofting as a land management system, but in conjunction with an appropriate programme of support for sustainable land management we believe they can help in this respect.

We welcome the specific reference to sustainable development with reference to the Crofters Commission's general duties. This is important in order to set crofting activity in the context of sustainable development and to link it to other legislation such as the Natural Heritage (Scotland) Act and the Land Reform (Scotland) Act. Powers in Section 4 will enable the Commission to develop new grant schemes to promote the sustainable development of crofts. We believe this could be an important step in setting support for crofting activity within the wider context of Scottish and E.U. rural development policy. However, we would expect in future that all publicly funded support for land management would be part of the Rural Development Programme for Scotland and, more specifically, the expanded Land Management Contracts scheme the Executive proposes to introduce.

We welcome the introduction of proposals in the Bill to simplify the legislation and to ensure crofters and crofting communities are appropriately consulted and involved, particularly in any decisions that may affect the environment.

Many of the issues in this Bill are beyond the immediate terms of SNH's remit. The more specific comments that follow are limited to those aspects of the legislation having particular significance for the natural heritage.

The statutory conditions

In the past there have sometimes been difficulties in reconciling the requirement to cultivate a croft with the management needed to maintain the natural heritage value of special sites (under management agreements with SNH) or of croft land more generally (for instance under agri-environment schemes). The provision in Section 11.1.b. reflects our view of the important contribution that much croft land makes to the natural heritage when suitably managed. It could make an important difference in practice in facilitating conservation activities among crofters. We are entirely satisfied with the wording in Section 11, but Paragraph 36 of the Explanatory Notes is less clear on this point and could be misleading

We welcome the clarification that Good Agricultural and Environmental Condition and cross-compliance should be the point of reference for determining whether a croft is being neglected (Section 12, modifying Section 5B.1 of the 1993 Act). This will help align the requirements with those that apply more generally to land subject to the Single Farm Payment Scheme and rural development schemes. In some situations reduced agricultural activity could benefit conservation by allowing the regeneration of semi-natural habitats but more generally a lack of agricultural use or management is likely to result ultimately in the decline of certain habitats, species and landscapes that are characteristic of crofting areas.

Section 11.2.b. lists the control or eradication of irises as an indication of whether a croft is being kept in a fit state of cultivation. Irises provide much of the cover that is essential for corncrakes, particularly in the Outer Isles. We recognise that cultivation may involve controlling irises, but we would prefer the proposed amendment not to mention them specifically because it may encourage people to remove them in situations where they are important for conservation.

New crofts and new common grazing

While we support the introduction of the measures providing for the creation of new crofts and new common grazings insofar as these will help maintain active crofting, we believe the Commission should have a role in ensuring that when crofts or common grazing are created, the potential impact on the natural heritage is taken into account. Where the changes proposed are likely to involve the agricultural improvement of uncultivated land or re-structuring of agricultural land (as they may often do) there may be a need to obtain specific approval under the Environmental Impact Assessment (Uncultivated Land) (Scotland) Regulations 2002.

Section 14 seeks to provide opportunities for more crofters by facilitating the division of existing crofts, through changes to section 9 of the 1993 Act. The creation of new crofts, as proposed, grants the right to build a house on the new croft. It would appear, however, that the occupant of the new croft could then purchase and subsequently de-croft the holding. As we explain next, the use of croft land for building development, particularly if this kind of speculative building is a real possibility, could involve risks to the natural heritage.

Changes to allow the use of crofts and common grazing for purposes other than the traditional ones

We support the proposals to facilitate the use of crofts for additional ‘purposeful uses’ and we believe there are significant opportunities here for developing projects that would benefit the natural heritage, for example connected with wildlife tourism or recreation. Some changes of use could have detrimental effects, but existing requirements under planning and Environmental Impact Assessment legislation should ensure that these effects are taken into account in the approval of any development. A particular concern is the possibility that common grazing or crofting land might be developed for housing without regard for the character of the landscape. While we recognise that there is a shortage of affordable housing in some crofting areas, we believe the use of crofting land for building should only be approved within strict guidelines (including adherence to revised Local Plans), so as to ensure such development takes proper account of the character and amenity of the area.

We recognise the difficulties faced by crofting communities under existing legislation in attracting renewable energy developments and we welcome the proposals in this Bill that would facilitate crofters’ involvement in locally initiated developments as an alternative to development that may be ‘planted’ in crofting areas giving little benefit to local communities. Generally speaking, domestic and small-scale proposals for renewable energy production can, if sensitively sited, be accommodated within the crofting landscape. There is considerable overlap, however, between the crofting

areas and the National Scenic Area (NSA) designation, which falls within Zone 3 (the most sensitive category) of our strategic 'locational' guidance for onshore, wind farms in respect of the natural heritage. Renewable energy development proposed for land under crofting tenure should therefore avoid adverse impacts on those wild and dramatic aspects of the landscape that are a significant economic asset for the tourism industry. In particular, proposals on croft land should not have a significant adverse impact on the qualities for which an area has been designated as an NSA, National Park or Area of Great Landscape Value and should meet the policy tests set out in the relevant National Planning Guidance (Renewable Energy NPPG 6 and Natural Heritage NPPG 14).

The provision for putting common grazing land to new use is likely to lead to an increase in apportionment, since many proposals will come from individuals rather than townships. Unregulated apportionment could undermine the benefits for the natural heritage associated with wider crofting land use. High levels of apportionment during the 1980s and 90s were associated with a great deal of fencing and agricultural improvement that was detrimental to the scenic quality of the crofting landscape, to its plant and animal communities and to the accessibility of the land. We therefore strongly support the role that the Commission will have in granting consent for new uses, and we would hope that as part of this it would consider the consequences of fencing and other incidental changes that may be involved.

The use of crofts or common grazing for forestry

The changes to Section 50 of the 1993 Act that provide the framework for joint forestry ventures will help to facilitate diversification by crofters into forestry. We would like to see schemes introduced for establishing community woodlands in crofting areas, and projects developed that could create opportunities for wildlife, enhance the landscape and provide a resource for public enjoyment and recreation. The majority of early forestry developments on croft land involved purely commercial approaches to planting and, as a result, have detracted from rather than enhanced the natural heritage. Requirements of forestry grant schemes and Environmental Impact Assessment should be rigorously applied in future to ensure that potential negative impacts are appropriately considered and that forestry on croft land makes a positive overall contribution to wildlife and the landscape.

The amendment in Section 30.2 to Section 50 of the 1993 Act (50.B.9) allows the Commission to impose a condition requiring a deer-proof barrier to be erected around common grazing land affected by a proposal for development or a change of use, where the owner asks for it to be provided. Deer fencing can adversely affect public access, biodiversity and the landscape (not to mention deer welfare) in some situations, though we recognize that it is often the most practical and straightforward option for controlling the effects of deer over the short to medium term. We are satisfied that the requirement for reasons to be specified will help to ensure a balanced decision is reached about when and whether deer fencing is appropriate. The appropriate use of deer fencing is an issue that is currently the subject of discussion between SEERAD, the Deer Commission for Scotland, the Forestry Commission Scotland and SNH; it would be helpful if in reaching its decisions the Crofters Commission could take account of any guidance that emerges from this dialogue.

Crofting community right to buy

The ability of a crofting community to buy the shooting rights over the land that they may be purchasing could prove useful in connection with any locally based initiative to control populations of wild geese. One of the obstacles encountered in several situations where geese are a problem is in achieving a significant level of control by shooting – those holding the shooting rights are unable or unwilling to shoot sufficient numbers to make an impact on the population. If they owned the shooting rights, crofting communities would be able to let out the shooting themselves, promoting a higher level of control.

Policy Memorandum

The objectives of the Bill refer to one of the main aims of crofting (and the crofting Bill) as 'preventing some landscapes reverting to wilderness'. This portrays in quite negative terms the contribution that crofting makes to shaping the landscape (and may not reflect the relative 'wilderness' value that some people may attach to croft areas). We suggest that a reference to 'shaping and maintaining the qualities of some landscapes, including actively managed landscapes' may be a more positive statement.

Financial Memorandum

The Financial Memorandum should perhaps state (as for local authorities) that the provisions should not impose any additional costs on SNH. Our concern is that on SSSIs there might be an expectation that SNH would pay compensation where, by reason of the designation, a crofter might be restricted in putting croft land to certain new uses.

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

8 May 2006
ERD/S2/06/15/1j

SUBMISSION FROM THE JOHN MUIR TRUST

Introduction

The John Muir Trust (JMT) welcomes the debate on the future of crofting created by consideration of the Crofting Reform (Scotland) Bill. This is an opportunity to clarify and streamline existing procedures and reduce bureaucracy.

JMT works closely with crofting communities on five estates it owns – Sconser, Torrin and Strathaird on Skye; and Sandwood and most recently Quinag in Sutherland. The Trust is also involved in community-based trusts which own croft land – The North Harris Trust and the Assynt Foundation. JMT wishes to see strong crofting communities and believes that crofting has played a major part in keeping people living on the land in the crofting counties.

Crofting tenants control the grazing on croft land and therefore have a far greater say on managing the land than landlords. JMT has always recognised this fact which sets a practical context for our relationship with crofting communities. Conservation gain can only be achieved by agreement, and conservation is as much concerned with people as with the environment.

The Trust has been privileged to be welcomed by crofting communities – indeed in some cases invited by crofters to become landlords -and to have been asked to work closely with crofters on a wide range of social, economic and environmental issues.

The Trust believes that its evidence to the Environment and Rural Development Committee of The Scottish Parliament is secondary to that given by crofters themselves and by crofting organisations, and has agreed to be represented simply to assist the committee on some issues on which the Trust has experience as a sympathetic crofting landlord.

JMT Crofting properties

Estate	Purchase d	Crofted area (ha)	No. of full crofts	No. of crofts including sub- divisions	No.of crofters
Torrin	1991	2225	18	28	22
Sandwood	1993	4650	56	56	32
Strathaird	1994	1295	47	57	47
Sconser	1997	3000 (approx)	30 (plus 14 small crofts)	30 (plus 14 small crofts)	19
Total		11170	165	185	120

Several of the crofters are owner-occupiers but all are tenants as far as the common grazings are concerned. Quinag is not included in the table as this involves common grazing only, the crofts themselves at Newton and Newton Unapool lying on other estates (one owned by the crofters themselves and the other privately). On each common grazing (except Quinag) there are sheep and cattle. Crofter forestry schemes are present on Torrin (2 schemes), Strathaird (2 schemes) and Sandwood (1 scheme).

For each property the JMT engages with the crofting community, along with the wider community, by personal contact and through local Management Committees and Community Association groups. JMT has supported various projects on in-bye crofts and common grazings by giving assistance through staff time, engaging volunteers in undertaking activities on the land and by financially contributing towards projects (in terms of a grant or an interest free loan). Such projects have fallen within the aims and objectives of the JMT. Examples include assistance with crofter forestry projects, cattle handling facilities, fencing, control of invasive plant species, drystone dyking, erosion control and provision of skips for removal of rubbish.

JMT has also actively worked with the crofting communities to facilitate built development on the common grazings i.e. Torrin shop and land for housing. This has been difficult (and costly) due to restrictions set by funders who contributed towards the purchase of several of the estates.

Comments on Crofting Bill

Reform of the Crofters Commission

JMT welcomes proposals for the commission to work in partnership with other bodies for the benefit of rural and crofting communities. The commission will need to be very sensitive and responsive to the views and needs of crofters.

The streamlining of croft sales whereby the commission will not need to go through bureaucratic procedures regarding agricultural use etc unless there is a challenge by interested parties, is sensible and welcome.

Register of Crofts

JMT would welcome a map based register of crofts and the additional information to be held i.e. landlords details, common grazings boundaries etc. This should clarify things for the crofters as well as for the landowners.

Landlords often do not receive clear information on crofting boundaries in taking title to land. JMT has been successful in solving this issue by preparing boundary maps in the event of the sale of croft house and garden ground and discussing and agreeing these with neighbours.

JMT agrees that entries on the Register of Crofts undisputed for 20 years should be declared as a croft.

Creation of new crofts

JMT supports the ability to create new crofts both within the crofting counties and outwith the crofting counties. JMT has itself significantly extended the common grazings on one of its properties (Sconser) at the request of the crofters.

We would support the option of entering agreements limiting the right to buy or assign the croft (with newly created crofts). If this is not included then it will restrict the number of cases being approved, as landlords will be wary of creating a croft and then possibly being obliged to sell on to the tenant at a later date.

Compensation for creating a croft

This is fair. If it is not included landlords will be extremely wary of agreeing to create crofts due to the difference in value of non-croft land and croft land.

Croft purchase legal costs

JMT agree that the crofter should meet the landlord's legal costs for croft purchases. Presently the JMT are selling crofts for 15 times annual rent (in the region of £200 in many cases). Our legal costs often are 2 to 4 times this (substantially more in case where exact boundaries are disputed between crofters). As crofters have a statutory right to purchase their crofts the landlord should not be out of pocket as a result.

Crofter Forestry approval

The JMT agree with the principle that a grazings committee can contest a landlord's refusal of a scheme in order that good proposals are not unnecessarily stifled. We also welcome the opportunity for joint landlord/grazings committee projects. The JMT has worked very closely with several of the grazings committee's woodland projects on its properties. Official joint working would have been welcomed in several of these projects.

Re-letting & Division/Sub-letting/Assignment

Concern has been expressed about the impact on valuation of creating a “free market” in tenancies. However crofters already have a right to buy their croft house and garden ground at 15 times annual rental which means that crofts can then be sold on the open market whether or not the proposed changes in relation to assignment of tenancies comes into effect.

Croft boundaries

JMT welcome the Land Court having the power to declare the position of a croft boundary where there is not sufficient evidence to enable the boundary to be determined.

Resumption/Decrofting

Resumptions may be temporary – JMT welcome this as it ensures land is returned to crofting when/if a development is no longer in existence.

Development Schemes

JMT agree that development schemes proposed by the landlord on croft land should not be detrimental to the crofters utilising that land and that compensation should be paid.

Croft/Common Grazings use

JMT welcome the use of croft land either for cultivation or some other purposeful use. However it should be recognised that managing for conservation is a “purposeful” use although some may see it as “unkept” or “un-used”. This conservation use may not involve some activities that are seen as “good agricultural practices” such as vermin control, whin control etc.

Apportionments

JMT support time limited apportionments in order that land that ends up being unused can revert to common grazing.

Appeals & Access

No issues with either

Community Right to Buy

JMT support the opportunity for a crofting community to buy out the tenancy of any lease over eligible croft land. This falls in with our belief that the communities that live and work on the land are the true guardians of that land and should largely control what happens on that land as well as realising any benefit (financial or otherwise) from that land.

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1k

SUBMISSION FROM ARGYLL AND BUTE COUNCIL

1. INTRODUCTION

Argyll and Bute Council welcomes the opportunity to contribute to the Enterprise and Rural Development Committee's inquiry into the general principles of the Crofting Reform etc Bill. The Council submitted a formal response to the Scottish Executive's consultation on the Crofting Reform Bill which was launched in March 2005. The reform of the crofting legislation is the latest in a series of measures by the Scottish Executive to deliver land reform to Scotland. It follows the Land Reform (Scotland) Act 2003 which gave crofting communities the rights to seek to purchase croft land itself.

Crofting is a significant and beneficial land tenure in Argyll and Bute but it is also fragile because of the small scale of its activities and its location in our more remote and fragile mainland and island areas. The Council welcomes the overall aim of the Bill which is to allow crofters and crofting communities greater rights and enhance their ability to determine and secure their own future. However it is imperative that the Bill also secures the long term sustainability of crofting within Argyll and Bute.

In October 2003 the Argyll and Bute Agricultural Forum, of which the Council is a partner, undertook a survey of agricultural and crofting holdings within the Argyll area. The survey was undertaken in order to inform the development of the recently launched Agricultural Strategy for the Argyll Area which highlights the importance of crofting and agriculture to the rural economy of Argyll and Bute. The vision of the Strategy " is to see sustainable and prosperous farming and crofting enterprises benefiting communities across the Argyll Area".

The Argyll and Area Survey of Agricultural Holdings 2003 highlighted that at that time Argyll and Bute had a total of 793 crofts spread across much of the area but restricted to the old crofting county of Argyll. The greatest numbers of crofts were found on Tiree (273), Mull (123), Lismore and Appin (115), Islay (85), and the parish of Ardchattan and Muckairn in North Lorn (69). The island of Tiree currently accounts for approximately one third of all the crofts in Argyll and Bute and has the highest percentage of active crofts with a third of the population being involved in crofting in some form or other. In locations such as Jura there have been a number (12) of new crofts created through

reorganising existing crofts by means of sub division and changes to existing boundaries. This has resulted in a number of young people returning to the island to taking up these crofting tenancies. It is through the retention of and return of our young and economically active population that our more remote and fragile mainland and island communities will become more sustainable and crofting could play a key role in helping to achieve this. Financial support mechanisms such as the Croft Entrants Scheme play a key role in helping to achieve this.

The Survey also indicated that of the 100 crofters who responded, 52% were earning £10,000 or less. The average annual gross earnings in Argyll and Bute is £20,298 and the Scottish figure is £22,204. Crofting incomes are therefore significantly below national averages and many crofters have to undertake “off croft” activities to supplement their incomes. 55% of crofters were over the age of 60 (as opposed to 31% of farmers). 39 % of the crofting respondents to the survey participate in the Environmentally Sensitive Area Scheme on the Argyll Islands.

Crofting contributes significantly to retaining rural, and especially island, populations and culture as well as sustaining the environment. It can help to address the issues facing many of our more remote and fragile communities such as depopulation as well as the loss of the young and economically active. However, it is also a fragile economic activity that requires support to retain its vitality and viability.

2. THE BILL

Use of a croft

Under current legislation the principle use of a croft is restricted to agriculture and can only be used for other purposes where those purposes would not affect the cultivation of the croft. The use of common grazing by shareholders is restricted to grazing and traditional practices such as peat cutting and crofter forestry. Whilst there will continue to be grant support for the use of the croft for agricultural purposes, the new Bill will remove the agricultural restriction and will allow in-by croft land to be put to “some other use, being a purposeful use” and the common grazing for wider uses than as currently restricted. All this will be subject to the approval of the landlord or failing the landlord’s approval the approval of the Crofters Commission itself as well as the need for any statutory approval namely planning approval.

Whilst it is appreciated that the reason for the changes in the use of the croft are to reflect what is already happening in reality, and to allow crofters and stakeholders more flexibility to meet opportunities, there are some concerns that the removal of agriculture, as the primary use of croft land, will encourage the loss of cultivatable in-by croft land. This is the better agricultural land of which there is relatively little. In addition there is a concern that if a croft no longer has to be agriculturally viable that this will encourage sub-division in cases where it would not previously have been considered. This could well encourage the creation of smaller croft sites which could almost be described

as simply house sites on in-bye land. The lack of clarification as to what constitutes a minimum size of croft also makes this more likely.

There is the potential for the change in the land use of the agricultural in-bye crofts to have a significant impact on the local environment and on the balance and viability of agriculture and crofting in the different crofting townships. It may be that these issues could be addressed through the adoption of local area policies which are discussed below. It has to be remembered that the change from agriculture as the primary use of the croft may not be acceptable as regards existing local planning policies as detailed in the local development plans, and reference should always be made to these before any decisions are taken.

There is a need for the Bill to provide a clear definition as to what is meant by “purposeful” uses in order to prevent uncertainty and confusion and to allow the Commission to ensure that crofts are operating in accordance with the statutory conditions of their tenancies as laid down by the Bill.

Where crofting land is used for purposes other than agriculture it is important that the use can be reversible thereby allowing the land to be capable of reverting back to agricultural use at some time in the future. This would be particularly relevant where better in by land is involved. It is also important that there is still active support for the use of the croft for agriculture and that diversification doesn't undermine a croft's agricultural viability. It would be unfortunate if the Bill were to encourage the loss of good quality arable croft land to other “purposeful” uses. In this regard it is important that there are strong support mechanisms for the continued development of crofts for agricultural use. Pillar II of the Common Agricultural Policy (CAP), referred to as “ the second pillar” relates specifically to rural development and the new Rural Development Regulations offer an opportunity to ensure that there is sufficient economic incentives to retain existing and encourage new agricultural based crofts. If there is a significant loss of agriculture as the main use of a croft it may well have significant environmental implications, affect the agricultural viability of a crofting area, result in asset stripping of the croft, encourage speculative development and potentially undermine the crofting way of life.

The Bill will amend the existing statutory conditions for croft tenancies and the use of crofts to introduce a new condition which would require the croft to be kept “ in a state fit for cultivation” except where that was incompatible with a new purposeful use or where the crofter is cultivating the croft for conservation purposes. The Bill needs to clarify exactly what it meant by “in a fit state for cultivation” in order to prevent confusion and uncertainty and to allow action to be taken where there is non compliance with this condition.

Neglect or misuse

There is an issue with regard to absenteeism and dereliction of both land and houses within existing crofts. There is a need to ensure that every support is given to the Crofters Commission to prevent this and to address it where it is happening. The enhanced powers given by the Bill to the Crofters

Commission is to be welcome and if used correctly could reduce the number of absentee tenants and help in securing crofting for the next generation.

New crofts

The current legislation does not allow for the provision of new crofts except through the sub division of existing crofts into two or more parts. The new Bill will give landlords the powers to create new crofts and will also allow the landowner and crofter to agree that the right to buy would not apply to the new croft or any future reassigned croft. It was felt that this would hopefully lead to landlords agreeing more readily to the creation of new crofts as these will not automatically result in the loss of ownership of parcels of their land.

The size and scale of any new croft needs to be carefully considered to ensure that it is not of a scale which is out of keeping with the crofting units in the immediate vicinity, and to prevent the creation of what are in effect no more than house plots with large gardens. The principal of designating crofting townships which are consistent with local plan policy should be considered and taken into account in the drawing up of any local policies. The creation of new crofts needs to be in accordance with local development plan policy and should not undermine the sustainability of existing crofting communities. It is also important that in any application for a new croft that there is consultation and early dialogue with the planning authority and other statutory authorities. In addition, reference should be made to local planning policy and other relevant local policies, plans and strategies such as the Agricultural Strategy for the Argyll Area. There also needs to be a clear link between the creation of new crofts and the local policies which are to be drawn up by the Crofters Commission. It is important to consider the need for the development of a policy for assigning these new crofts i.e. will the Commission or the local area panel have any input into the decision making process.

As previously stated it is important that the necessary fiscal incentives are put in place to provide the necessary support to those who need assistance when taking on a new croft. The Croft Entrants Scheme should be properly resourced to take account of the changes proposed by the Bill.

Forest Crofts

The creation of forest crofts is also mentioned and this has been given support by the Scottish Executive. The comments above would also apply to forest crofts. These forest crofts could provide an opportunity to assist in the creation of local clusters to serve the development of the biomass industry at a local community level within Argyll and Bute. The necessary financial incentives require to be put in place to support this. An example of support would be the pilot grant fund recently run by the Forestry Commission to encourage agricultural landowners to develop their forestry resource as a source of woodfuel. The new Rural Development Programme has the potential to provide financial support along these lines.

Scale

Scale is an important consideration as regards both new and existing crofts, particularly where subdivision is involved. The scale should be reflective of the nature of crofting and should also be reflective of other crofts in the immediate area. At present there is no minimum size of croft and this can often mean that you can have a croft which has the capacity to be little more than a house plot with a large garden. This situation may be further exacerbated by the fact that the purposeful use will no longer be restricted to agriculture and therefore there may be even less reason to have a meaningful physical area of land associated with a croft. There is genuine concern that this will encourage even smaller sizes of crofts and the development of what are in effect multiple house sites. If it was possible to set a minimum croft size which would discourage the use of the land simply as a house or holiday house site and would bring with it the requirement to cultivate a reasonable area of the land, this may discourage the exorbitant prices that can be achieved in the reassignment of tenancies and address the speculative nature of crofting.

Cost of tenancies

The issue of the high cost of croft tenancies which go on the open market is a serious concern and often means that crofts are priced beyond the means of local residents. In particular this can disadvantage the young and more economically active person. The creation of new crofts could help to overcome this issue and assist in addressing market driven speculative development particularly given that there will not necessarily be an associated right to buy. It is hoped that this will assist in the overall regeneration of our more remote and fragile communities. The setting of a minimum size of croft and the more proactive enforcement of neglected or misused tenancies also needs to be seriously addressed.

Local policies

In light of the extent of the geographical area covering Argyll and Bute it therefore follows that different crofting areas will have different characteristics, including differing land types. The variation not only relates to landscape but also to economic and social factors. As with the Argyll and Bute Local Plan, it is imperative that the local policies adopted by the Crofters Commission reflect the unique character of the different areas within which crofting takes place. There will often be a very delicate balance in ensuring the viability of these different crofting communities. There is a concern that where crofts change from an agricultural use to another principle use that this could upset that balance and in turn would impact on the viability of the remaining agricultural crofts in that particular area. It is important that consideration is given to the scale and number of crofts within a defined area as well as their land use in order to determine what would be required to make each crofting area and community viable and sustainable in the future.

It is important that any local policies are drawn up in consultation with the local community but also with those involved in the service provision within these areas. Account needs to be taken of existing policies as laid down in structure plans, local plans, local economic forum plans and agricultural strategies such as the Agricultural Strategy for the Argyll Area, and local

community strategies and plans. These documents will already provide the local policy basis for housing development, renewable energy development, forestry development, agricultural and business development thereby helping to prevent sporadic speculative development.

It is imperative that these policies also provide the framework and guidance for the future land use and development on existing and new crofts for each distinctive crofting areas. It is unclear as to the scale of area that is being considered when the Bill talks about local policies. Serious consideration needs to be given to this and account taken of the diversity of the often distinct crofting areas within areas such as Argyll.

Planning process /consultation

There is a need for full engagement between the Crofters Commission and the planning process both as regards local plan policy and in the consideration of individual planning applications affecting crofting land. The Crofters Commission should be a statutory consultee on any planning applications for developments affecting crofting land. It is important therefore that the Commission work closely with the relevant local authority in the development of policies within the local authority development plan to ensure that croft land is protected from designations which would encourage speculative development, the resulting effect of which would be the decrofting of that land. The Council would be happy to input into the development of the local policies and to be represented on any crofting panel/board that might be proposed at a local level.

Renewable Development

It is important that any renewable development which is being considered on a croft takes account of the relevant local plan policies which are applicable to that area. In addition renewable energy developments should not necessarily be seen as being the sole land use of the croft. Smaller scale renewable developments could help to support the existing use of the croft and the wider community through the provision of a sustainable renewable energy supply. This could go some way towards matching local energy needs to local renewable energy supply particularly in our more remote and fragile communities. There would be concerns that the Bill could result in much larger scale crofts which would only exist to allow the development of large scale commercial renewable development. The area policies should provide guidance on this form of developments on crofts.

This new Bill will bring with increased requirements on the Crofters Commission and it is imperative that the Commission is properly resourced to allow the new powers and measures introduced by the Bill to be implemented. It is also important that the necessary fiscal support mechanisms are put in place to support the overall aim of the Bill which is to secure the future of crofting for the next generation.

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/11

**SUBMISSION FROM ARGYLL AND THE ISLANDS ENTERPRISE AND HIGHLAND
AND ISLANDS ENTERPRISE NETWORK**

Additional written evidence submitted by Argyll and the Islands Enterprise

Argyll and the Islands Enterprise (AIE) is one of Highlands and Islands Enterprise's (HIE) nine local enterprise companies. HIE has already submitted written evidence to the Committee on the Crofting Reform Bill and the purpose of this additional paper is to provide a brief overview of the distinct area served by AIE.

OVERVIEW

Argyll and the Islands is a large geographically diverse area, covering 715,615 hectares, accounting for around 20 per cent of Scotland's coastline. The area consists of 27 inhabited islands and three peninsulas. Against the background of low unemployment but lower than average earnings and depopulation from the fringes, the current AIE strategy has two main thrusts; investing in industries, and their necessary infrastructure, that offer higher earning potential; and supporting projects that help to sustain communities in the peripheral areas.

Crofting, whilst not a major contributor to the Argyll economy in general, is a powerful resource in assisting in the stabilisation of our most rural communities. AIE welcomes the determination to improve the long term viability of crofting and crofting communities.

Demographic change

The population of the Argyll and the Islands area stood at 70,156 in 2001, a decrease of 1.2% from 1991. This compares to a 0.8% growth in the HIE area and a 0.4% decline in Scotland over the period. Local analysis mirrors national trends with the more fragile areas losing population and areas around relatively prosperous towns and settlements gaining population.

The main areas of growth in the 1990's were the wards within commuting distance of Oban and Lochgilphead. These accessible rural locations grew by about 1,000 people, while Arran saw its population grow by just under 600.

Population loss has been most significant in some of the island communities. Between 1961 and 2001 the population of Colonsay decreased by 31.9% and that of Tiree fell by 22.7%.

Age structure and out-migration

The percentage of the population aged 44 years or less has decreased in the Argyll and the Islands from 57.8% in 1991 to 51.3% in 2001. This is lower than the Highlands and Islands which was 56% in 2001. Results are influenced by the out-migration of young people from the Argyll area, a serious constraint on economic growth.

The provision of a more diversified employment base will also help to retain young people in the area. The AIE area has a slightly lower percentage of people aged 0-4 years and 5-19 years than the average for the Highlands and Islands and Scotland as a whole. However, the percentage of people aged 20-44 years in the AIE area is of particular concern – some 28.8% of people category compared to 32% for the Highlands and Islands and 35% for Scotland.

The percentage of the population aged 65 years or older in Argyll and the Islands has increased slightly, from 19% in 1991 to 20.5% in 2001. This is higher than the percentage for the HIE area, which was 17.2%.

Employment

The public administration, education and health sector is the largest employer in the Argyll and the Islands with 33% of the total workforce, followed by the distribution, hotels and restaurants sector with 29.4%. Agriculture, forestry, fishing and construction sectors also provide a larger percentage of employment in Argyll and the Islands, with 2,024 people employed in agriculture. The primary sectors continue to be in decline but are still a prominent economic driver, particularly in more remote mainland areas and islands.

Most employees (53.8%) work in companies with 24 or less employees, with only 19.2% working in firms with more than 100 employees, highlighting the dominance of small firms in the Argyll and the Islands area. Long-term competitiveness within key sectors and exploiting opportunities from emerging sectors are crucial for driving productivity and raising incomes in the area. Science, technology and renewables offer a diverse and exciting range of opportunities with the Scottish Association for Marine Science at Dunstaffnage and Vestas Celtic Wind Technology in Macrahanish both key economic drivers.

Earnings

The average gross earnings were £287.4 per week in the AIE area in 2004, lower than HIE average (£296.8) and significantly lower than Scotland (£316.5). This is influenced by the nature of employment, particularly the dominance of tourism which is typified by lower wages.

Unemployment

The unemployment rate has fallen steadily in Argyll and Islands since January 2001, decreasing from 4.7% in January 2001 to 3.1% in January 2005. The unemployment

rate for the AIE area has followed a broadly similar line to the overall HIE area for the last 4 years, with pockets of above average unemployment felt in the more remote and fragile areas.

The decreasing unemployment rate experienced across the area as a whole does however still mask a number of underlying issues, namely general labour shortages, the out-migration of young people seeking better employment opportunities and the skills shortages experienced in key sectors such as construction. These issues are felt across the Highlands and Islands as a region but are more prevalent in the island groupings.

DEVELOPMENT CONSTRAINTS

Housing

Lack of affordable housing continues to be a significant constraint on economic growth across the area. Changing household composition means that significantly more houses are needed to accommodate the existing population and a step change is required to house the newcomers the area is welcoming.

Transport

The development of an effective transport network is essential in mitigating the effects of the area's geography, helping to alleviate economic problems and ensuring businesses become more globally connected. There is a high dependency on cars in rural areas, primarily due to limited public transport services, compounded by employment choice in others.

FUTURE ASPIRATIONS

A key factor in the future well-being of Argyll and the Islands will be the ability to attract new residents and to retain its young people. This will depend on a range of factors, including the provision of improved services, such as housing, transport and recreational facilities. This will pose continued challenges for more remote areas, notably small island communities and fragile areas where service provision is most costly. A growing population, with a higher proportion of economically active people, is crucial to continued economic success in the area and the wider Highlands and Islands region.

Long-term competitiveness within key sectors and exploiting opportunities from emerging sectors is crucial for driving productivity and raising incomes in the area.

World-rated attractiveness of both natural and built environments, fully embracing sustainable development principles, is required to make the area more attractive as a global destination to live, work, study and visit. Improvements to the physical and technological infrastructure across the area are also required to meet this objective.

Future growth and prosperity for Argyll and the Islands will require a reduction in social and economic disparities within the area, mitigating the problems caused by peripherality. A climate of confidence in the future is required to help these aspirations.

A foundation for success will be in long-term investment in the various communities across the Argyll and the Islands, especially throughout the more sparsely populated areas. The main aim is to generate sustainable local communities which are diverse, adaptable and resilient.

SUBMISSION FROM HIGHLAND AND ISLANDS ENTERPRISE

1. Summary

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

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

- HIE welcomes the introduction of the Crofting Reform Bill and feels that there is much to applaud and support within the Bill.
- HIE would recommend that an overall vision for the future of crofting is developed by the Executive, the Crofters Commission, other involved agencies and crofters.
- Crofting can play a greater role in helping maintain and increase the population of our rural areas through encouraging and enabling more young and economically active people to live and work in our rural communities.
- The provisions in the Bill relating to the creation of new crofts are particularly important and have the potential to be a significant tool in the sustainable development and regeneration of rural communities in the HIE area..
- There is potential that the expanded developmental role of the Crofters Commission could cause confusion amongst crofters and others and lead to a cluttered funding landscape. HIE would therefore recommend that the work of the Commission focus on the regulatory aspects of crofting and dispersal of agricultural related grants and that partnership working between the Crofters Commission and HIE be better defined to help achieve our common goals.
- HIE would recommend that the Crofters Commission be obliged to utilise their existing and proposed powers to better regulate crofting. This process should be supported through setting the Crofters Commission targets in key areas of operation, such as percentage of absentee crofters and number of new crofts created.
- Crofting as a land tenure system is uniquely placed to be able to safeguard and develop the economic, environmental and social health of our rural communities. HIE would recommend that more robust measures be adopted in the Bill and by the Crofters Commission to protect the interests of the crofting community as a whole as well as the wider public interest.
- The Bill gives communities under Part 3 of the Land Reform Act the ability to buy out interposed and other leases on crofting estates. Whilst this is to be applauded, it does not resolve the underlying issue of whether these leases are valid in the first place. The Minister has in the past made a public commitment that the Executive will test the validity of such a lease in the Land Court and HIE would urge that this be done as soon as possible.

2. HIE Response to the Consultation

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

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

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

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

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

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

Creation of crofts

- The proposals to allow the creation of new crofts is seen as extremely positive and as a significant rural development tool throughout the HIE area.
- Under the proposals in the Bill it will be possible for a crofter to enter into agreement with a landlord to opt out of his/her statutory right to purchase or assign croft land, and for this to be binding on successive crofters. This is vital in order to encourage landowners to release land for new crofts.

- For this measure to be effective there needs to be widespread governmental and agency commitment towards effective utilisation of the proposed power, including an Executive stated annual target for new crofts created. This would be aided by a commitment by the Executive to release its own land for new croft creation, such as on Forestry Commission Scotland (FCS) land.
- HIE's experience with community and other landlords indicates that there are considerable complexities in the creation of crofts and HIE would therefore urge that the detail of the Bill and the processes required be simplified as much as possible.
- Given the high level of demand for crofts it is unlikely that this measure on its own will be able to meet demand. HIE would therefore suggest that the Crofters Commission take effective action to address the issues and problems surrounding the sale and assignation of existing crofts, absenteeism and multi-croft occupation.

Extension of the crofting legislation outside of existing crofting counties

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

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

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

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

- HIE recommends that the Crofters Commission be obliged to use their existing and proposed powers to enforce crofting regulations. This process should be supported through setting targets in key areas of operation, such as percentage of absentee crofters and number of new crofts created.
- HIE welcomes the proposals to allow the Crofters Commission to challenge neglect of crofts with consent of the landlord.

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

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

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

Sale of Croft Tenancies

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

Releasing Croft Land for Housing

- Given the high demand for housing and house plots in the HIE area it is important that suitable croft land is released for housing development to meet this demand.
- HIE would recommend that the Bill should look to secure the long term sustainability of rural communities through a framework to encourage and enable young and economically active people to enter into crofting. Potential solutions to facilitate this and to help the release of croft land to meet local housing needs include:
 - Encouragement for local crofting communities to address local housing needs by the strategic release of croft land – particularly from common grazings.
 - A commitment and obligation for the Crofters Commission to greater utilise their existing and proposed regulatory powers.
 - The Crofters Commission to become a statutory consultee during the planning permission process so as to ensure that croft land is not lost to housing developers without consideration of the needs of the local crofting community.
 - Potential for provisions for decrofting applications to come before planning applications.
 - Insertion of provisions in the Bill to temporarily suspend crofter's rights to assign or purchase crofts for an initial period of up to 10 years.
 - Rigorous enforcement of regulations by the Crofters Commission to limit the number of absentee crofters.
 - Restrictions on the number of separate crofts that an individual crofter can lease.
 - Adoption in Local Plan zoning for a greater area of non-croft land for housing development.

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

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

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

See Point 3a below.

3. Amendments to the Land Reform Act

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

a. Leases over Croft Land

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

b. Crofting Landlord

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

c. Community right to buy

HIE would suggest that the Bill should specifically and explicitly allow “crofting community bodies” as constituted and defined under Part 3 of the Land Reform Act to be able to register an interest in land under the Community Right to Buy provisions of Part 2 of the Act. In order to further align Executive policy and practice, HIE would also urge that crofting community bodies should be considered to be eligible bodies under the Forestry Commission Scotland’s National Forest Land Scheme.

d. Mapping

Under Part 3 of the Act, Section 73 requires crofting community bodies to definitively map the location and boundaries of croft land or sporting interests.

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

e. Voters Roll

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

Agenda Item 1

**Environment and Rural
Development Committee**

8 May 2006
ERD/S2/06/15/1m

SUBMISSION FROM THE SCOTTISH RENEWABLES FORUM

Scottish Renewables is Scotland's leading renewables trade body. We represent over 170 organisations involved in renewable energy in Scotland. Further information about our work and our membership can be found on our website.

Firstly many thanks for providing a chance to respond on what is a key issue for rural communities in significant areas of Scotland. This response has been formulated by the Scottish Renewables Forum following internal discussion within the Forum membership, including circulation of draft responses and through direct liaison with other organisations.

Introduction

Scottish Renewables broadly welcomes the Proposals put forward in the Crofting Reform etc. Bill, and in particular welcomes the amendments which are related to renewable energy development. If enacted these reforms will enable developers, owners and crofters to consider new developments for the use of crofting land and the mechanisms by which this can happen.

Renewable energy will have an increasingly important role to play within the Scottish energy sector in the future and has an important contribution to make to the Scottish economy and to meeting national environmental commitments. There are a diverse range of renewable energy technologies and we believe that each of these should be encouraged to play their role in Scotland.

Crofting land will be able to take advantage of these new opportunities, and crofters would gain either as individuals or as an overall community. Although current considerations for crofting land focus mainly on wind farm developments, as technologies grow and develop other types of energy development may be able to also bring benefit to crofting communities.

We would also like to point out that many of the crofting communities within Scotland are located in areas of significant renewable resource. This means that if correctly structured, this legislation will be important in helping crofting communities benefit directly from the delivery of the Scottish Executive renewable energy targets.

However, at present relatively few renewable energy schemes are proposed in crofting areas; something that indicates that the current legal framework for crofting prohibits development. The draft bill sets out renewable energy development as a reasonable purpose for crofting land. We strongly support this and would also underline that renewables could bring valuable income and employment to crofting areas, and so help to deliver the wider objectives of the Bill by maintaining or promoting viable distinctive communities.

To ensure this happens, the Bill must deliver on its overall objectives.

We support many of the proposed reforms contained within the Bill and the aims behind those reforms. Our principal concern, however, is that the extension of the right to buy the tenant's

interest in **any** lease over eligible crofting land will seriously undermine one of the stated aims of the Bill - to facilitate the use of croft land for non-crofting use to lead to a more diverse and more sustainable rural economy and more particularly :-

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

Notwithstanding the above we support a resolution of the issue created by the use (or potential use) of interposed leases to (a) thwart the ability of CCBs to collect the Landlord's income from such projects and (b) to control the future development of land. We would submit, however that there is a better way of dealing with the issue which would resolve the issue without prejudicing the other aims of the Bill.

PROPOSALS TO EXTEND THE RIGHT TO BUY

The proposal to extend the right to buy the tenant's interest in any lease over eligible crofting land is deeply concerning both in substantive terms and in light of the fact that a measure of such potential significance has only been introduced into the Bill at such a late stage, following almost nothing in the way of formal consultation. In our view this proposal as it stands is fundamentally flawed and must be reconsidered. The potential risk/uncertainty arising from this proposal has the potential to stymie commercial development of croft land.

We are of the view that this proposal does not fit within the overall policy objective of the Bill to "*to facilitate the use of croft land for other non-crofting use for beneficial purposes*".

In the Financial Memorandum which accompanies the Bill, the Scottish Executive reiterates that the proposal is primarily to deal with the possibility that land owners will use interposed leases to complicate and thwart crofting community right to buy applications.

The Executive reasons that the proposal meets this objective because "*if the crofting community body has a right to buy a lease it is unlikely that landowners will continue to create leases to achieve that goal since it would be pointless to do so.*" However, the Executive has failed to address the effect of the risks created by the proposal to a developer.

This failure will therefore reduce interest amongst developers of developing renewable schemes in crofting communities, because it brings increased risk, and will therefore reduce the likelihood that developers will be able to find investors willing to invest in such projects. This point applies equally to all types of developers, be they wind, bioenergy or hydro developers, or PLCs, independents or community-owned businesses.

The development of renewable energy schemes typically takes up to five years. A long development time for a project means that substantial investment is needed in taking a project proposal through pre-planning and planning, as well as in associated arrangements such as securing grid connection.

Developers and investors would not make these significant investments in project development if a CCB would have discretion to buy out a tenant's interest in a commercial lease of croft land, and therefore jeopardise any investment made on a particular proposal.

Assessed from a community perspective, any community interested in working with a developer or unilaterally to develop a scheme would struggle to find investors for the same reason.

Secondly, the uncertainty of tenure disincentives developers to consider development of crofted land as at any time a CCB could open negotiations with a competing developer, if it has submitted an application to buy out the original developer's interest in the lease.

Overall, developers face substantial risks throughout the lives of projects which might not be fully reflected in the Market Value calculated under the Bill in the event of a buy out. This disincentive to develop would lead to communities losing out on the development revenues and associated employment benefits that come with successful renewable developments. This was surely not the intention of the Scottish Executive in drafting the Bill.

Introducing a New Concept into Scots Law

The proposal introduces an entirely new concept into Scots Law – i.e. the right for a CCB which is buying a landowner/landlord's interest in land also to buy out the tenant's interest in all but a few specialized types of leases affecting that land. Traditionally any developer in Scotland making a sizeable investment - where their interest in land was to be leasehold - has sought to protect their position by entering into a long lease (greater than twenty years) which can be registered in the Land Registers/Registers of Sasine and enforced against the successor to the landowner/landlord.

As currently structured, the proposal would mark a major departure from that position: the CCB would not only have the ability to acquire the croft land, but also the ability to remove tenants who would have entered into a long lease legitimately believing that they had secured their interest in the land.

REMEDYING THIS SITUATION

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

Whilst we agree with the Executive's consultation analysis that, in relation to the issue of interposed leases, the "do nothing" approach is not an option, for the reasons detailed above we do not think that the Proposal is the solution to deal with what is in essence an "avoidance" issue and we do not think that the need for individual buy-out to be approved by Ministers would sufficiently address the concerns of developers and allow them to invest in commercial projects.

The Proposal does not actually prevent interposed leases from being put into place and it does not address the underlying question as to the validity of interposed leases. Rather, the Proposal addresses the issue of interposed leases by placing all leases of croft land on the same footing as an interposed lease.

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

FURTHER COMMENTS

Section 5(3) agreements under the 1993 Act

As we have highlighted above, the key issue for a developer is obtaining a degree of certainty that vacant possession of the croft land can be secured. We therefore welcome the provisions of Section 11(1)(c) which insert new provisions (subsections (3) to (10)) into the Crofting (Scotland) Act 1993 and which will provide that: (1) contracts or agreements intimated to the Commission should be recorded in the Register of Crofts; and (2) where a copy of a contract or agreement is entered in that register it will (providing it is not specifically stated that the agreement is not to be binding on successors to a croft) be binding on the successors to the croft tenancy.

We would like to see the Bill go further and remove the need for unanimous agreement of the crofters to be obtained provided ratification by the Land Court is obtained. For some developments unanimity would be impossible. We know of developers that are dealing with significant numbers of crofters (numbers in 100s or even 1000s is the norm). It will be practically impossible to secure unanimity from such large groups: ensuring a majority is therefore more practicable and equitable.

Resumption of Croft Land

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

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

I trust that you find the comments above of use in helping you deal with the issues set out within the Bill. If you would wish to get further details on our views then please do not hesitate to get in touch, and if needed we would be happy to appear before the Committee for further discussion of these issues.