Environment and Rural Development Committee

16th Meeting, 2006

Monday 15 May 2006

The Committee will meet at 2.00 pm in Cowan House, Highlands and Islands Enterprise, Inverness.

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

   **Panel 1**
   Cllr Richard Durham, Chair, Land and Environment Select Committee, Highland Council;
   George Campbell, Board Member, Highlands and Islands Enterprise;
   Allan MacRae, Chairman, Assynt Crofters’ Trust;
   Alistair Maciver, Area Representative, Scottish Crofting Foundation;

   **Panel 2**
   Shane Rankin, Chief Executive, David Green, Chairman and Drew Ratter, Board Member, Crofters Commission;

   **Panel 3**
   Keith Aitchison, and Jackie Forsyth, Branch Committee Scotland North, Public and Commercial Services Union (PCS) and Archie Macnab, Office Representative, Prospect Union, Crofters Commission staff; and

   **Panel 4**
   Rhona Brankin MSP, Deputy Minister for Environment and Rural Development, Shane Rankin, Crofting Reform etc. Bill Team Leader and Ethel Burt, Senior Principal Legal Officer, Scottish Executive Legal and Parliamentary Team.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240
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SUBMISSION FROM THE HIGHLAND COUNCIL

1. The Highland Council recognises the crucial role that up-to-date legislation can play in maintaining an active crofting sector and welcomes the opportunity to provide evidence to the Environment and Rural Development Committee.

2. The Council believes that crofting, as a system of regulated land tenure, has served to retain population in remote rural areas and has maintained economic activity at times when other economic opportunities were scarce. However, the pressures on crofting have changed and The Council’s opinion is that the regulation of crofting must change also, to remain valid for today’s situation.

3. The Council has considered its vision for the future of crofting and comments/evidence on the Bill should be seen in the context of the following:

   - The Council values crofting and its role in protecting local population, culture, landscape and environment.
   - The Council wishes to see the maintenance of flourishing crofting communities.
   - The Council wants to see crofting remain as a regulated system of land tenure.
   - The Council believes that crofts should retain a land-based purpose.
   - The Council would welcome greater active economic use of croft land.
   - The Council supports the retention of a Crofters Commission with adequate powers and resources and with the will to use these proactively to protect the crofting system and the crofting way of life.
   - The Council would like to see new land brought into crofting use, abandoned crofts returned to active use and crofts made available to new entrants at locally affordable prices.
   - The Council believes that crofting communities have the potential to contribute to the provision of affordable housing but would wish to see locally important, good quality land protected from housing development if alternative sites are available.

4. It is self-evident that a system of regulated tenure requires to be firmly and consistently regulated. The Council shares the views, expressed at earlier meetings of this Committee, that The Crofters Commission needs to take a more pro-active stance in regard to regulation and particularly to
enforcement. It is important that regulation is targeted at those who are abusing the system and does not create additional burdens to active crofters who are doing their best under difficult circumstances.

5. The free-market in croft assignations and the individual crofter’s right-to-buy has created a degree of debate, not least within The Highland Council. While it may not be possible to restrict croft values directly, The Council believes that stronger application of existing regulatory powers would temper market forces and help to ensure that more crofts were made available, that more crofts would be put to active use and that suitable tenants might be given preference when crofts are assigned.

6. While The Crofting Reform etc. Bill strengthens The Commission’s powers, it is by no means clear how The Executive would ensure that The Commission would make full use of the regulatory tools available to it. Further, The Council believes that the Crofters Commission should be given more power to deal with neglect and would be happy to discuss aspects of this with the Committee.

7. The Council remains concerned about the vague nature of “purposeful use”. As currently defined, “active neglect” might be a legitimate purposeful use. In addition, if purposeful use is poorly defined, it follows that it will be difficult to determine whether a prospective croft entrant has the appropriate “knowledge, skills and experience” to take on a tenancy.

8. The Council would welcome the concept of “Proper Occupier”. This is perhaps a key development that could resolve the issues highlighted above and result in workable legislation which safeguards the future of crofting. Proper occupier status should be applied to tenants and owner-occupiers alike. It should be something that every crofter, croft-entrant and purchaser must attain and should depend on demonstration of meaningful crofting activity –“use it or lose it!”. Where this activity involves some form of environmental management, it should be a requirement that this is under an approved environmental scheme (perhaps under the LMC Menu Scheme) and require inclusion on an IACS form. At the outset, all existing crofters should be deemed to have proper occupier status. New applicants should be required to attain proper occupier status via a process that includes the preparation and approval of a business plan. The special conditions for intervention placed on applications for proper occupier status and the conditions under which that status can be withdrawn, should be clearly stated and rigorously applied. Where an owner-occupier has his proper occupier status withdrawn, he would be deemed to be landlord of a vacant croft and could have a tenant imposed by The Commission. The Council would be happy to discuss aspects of this further with the Committee.
9. The Council shares with The Executive the desire that new housing in crofting communities should be developed in ways that meet the housing needs of the community while preserving the integrity of crofting livelihoods. The Council is pleased to be working with Commission staff in development of Local Plans and the identification of suitable house sites which do not compromise locally important croft land. The Planning etc Scotland Bill (Sec 18 (6)) states that it is the duty of a key agency to co-operate with the planning authority in the preparation of the authority’s proposed local development plan. The Council considers that the Crofters Commission should be designated a key agency within crofting areas and that Ministers should bring forward secondary legislation enabling this.
SUBMISSION FROM HIGHLANDS AND ISLANDS ENTERPRISE NETWORK

1. Summary

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

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

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

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

2. HIE Response to the Consultation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See Point 3a below.

3. Amendments to the Land Reform Act

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

a. Leases over Croft Land

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

b. Crofting Landlord

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

c. Community right to buy

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

d. Mapping

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

e. Voters Roll

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

Thank you for your letter of invitation to submit evidence to the Environment and Rural Development Committee. At the meeting of the Trust’s Board when this matter was taken up, it was initially agreed that written evidence alone would be submitted on our behalf. Regrettably, I think that it would be fair to say that the Board originally came to the conclusion that the consultative process being carried out in this connection is at risk of being seen as yet another exercise in public relations rather than being a genuine attempt to obtain the views of those who live and work in crofting communities. That certainly was the impression gained as a result of the apparent lack of real attention being given to the evidence submitted on behalf of our communities while the Land Reform legislation was being drafted. However, it has been decided to take up your invitation to send a representative to the meeting at Cowan House on 15 May.

1. Introduction.

1.1 The Board has some difficulty in understanding what concerns are actually driving the proposed legislation forward. It seems to us that the Crofter’s Commission already has adequate regulatory and development powers at their disposal to address the five main objectives that are set out in paragraph 1.2 of the introduction to the draft Bill.

1.2 The Board is concerned that the underlying thrust of the proposed changes is an attempt to free up the market in croft land so as to encourage the introduction of so-called ‘new blood’ to our crofting communities.

1.3 The Board is keen to underline the fact that the key ingredient to the survival of our crofting communities and our unique culture is retention of our indigenous young people. Access to croft tenancies is one of the principal rooting agents that will ensure that our young people are encouraged to remain in the places of their birth.

1.4 The Board asserts their firm belief that we already have sufficient evidence in this community to show that a) the loosening of assignation conditions on inby croft land in recent years on the false premise of encouraging new blood has resulted in a process of asset stripping by in-comers who are intent on selling house sites for maximum short term gain and b) this process has resulted in our indigenous young people abandoning crofting as a way of life and moving to the nearest large village or town in order to obtain suitable housing.

1.5 The Board therefore assert that what is required is more effective regulation within the framework currently at the disposal of the Crofters’ Commission.

1.6 Members of the Board are firmly of the view that a return to the concept of area representation on the part of Commissioners would be an effective means of reconnecting the Crofters’ Commission with our crofting communities. They also believe that greater representation on the Commission by genuine experienced crofters in preference to career academics and environmentalists would inspire a greater sense of confidence in future policy on the part of our communities. In
contrast, the Board believes that the Commission’s staff manifest a much greater sense of understanding and rapport with practical crofters.

2. Responses to issues for consideration.

2.1 Croft Boundaries. We agree that in the absence of clear documentary evidence to the contrary a _de facto_ boundary that has been accepted for a period of 20 years can be accorded legal status.

2.2 Deemed Crofts. We find it difficult to conceive of a situation where there can be tenanted rights in land regarded as Common Pasture in the absence of shares in inby. Accordingly we are unable to make informed comment.

2.3 Energy and other Commercial Developments on Common Grazings and other Croft land. We believe that the presumption should always be in favour of the individual crofter in respect of a commercial development on inby land and where common grazings are involved that it should be appropriate for 75% of shareholders to agree to any proposed commercial development. Furthermore, where developments are contemplated on common land, unless there are sound reasons to the contrary approved by the Land Court, capitalisation of compensation should not be permitted. Compensation to current and future shareholders on the basis of annual installments should be the standard practice.

2.4 Resumption of croft land for the generation of energy. We believe that resumption of land by landlords for projects that are in the public interest (i.e. public services such as water supplies etc.) should alone be regarded as reasonable purposes. Generation of energy appears to fall into the category of commercial development and therefore, in keeping with 2.3 above, such applications should only be approved where there is a minimum of 75% support from eligible shareholders in common grazings.

2.5 Share in Development Value. We believe that entitlement to compensation or in a share of enhanced development value should exclusively be available in installments and should attach to the shares in common grazings rather than to the individual. In contrast, where the development is proposed on inby land, the compensation mechanism should be at the discretion of the croft holder.

2.6 Return of Apportionment. We believe that it should be competent for a croft holder to apply for return of apportioned land to the common grazings from whence it was removed. On a croft becoming vacant having an existing apportioned area of common, it should be competent for the grazings committee to apply to have area restored prior to nomination of a new tenant by the landlord.

2.7 Croft Status. Where land has been registered and treated as croft land for 20 years or more, its status as such should be indisputable.

2.8 Crofting Tenancy. We firmly believe that the tenancy of a croft should only be capable of being registered in the name of an individual.

2.9 Rules of Good Husbandry. We believe that there may be a case for some form of rules of good husbandry to be adopted in crofting situations but these would need to be developed on the basis of further consultation with crofting interests, e.g. the S C F. The application of any such rules ought not to be possible in the absence of input from local grazings committees in any specific case.

2.10 Common Grazings. We are adamantly of the view that powers of grazings clerks ought not to be extended in the absence of a minimum of 75% agreement amongst shareholders. The proposed empowerment of grazings clerks is bound to lead in some cases to controversy in communities.

2.11 Grazings Regulations. The current arrangement where previously agreed regulations must be observed by all shareholders, ultimately subject to enforcement by civil statute, should remain in place.
2.12 **Grazings Shares.** The Board does not believe that there are any circumstances in which it would be appropriate for a grazings committee to be tenant of a croft.

2.13 **Access across Crofts.** If mutual consent cannot be achieved in the kind of circumstances envisaged, a legislative change to enable the Land Court to direct a landlord may be the sole solution.

2.14 **Land Reform Avoidance Measures.** The Board has no knowledge in practice of any such devices.


3.1 With the exception of specific points referred to hereafter, the Board in general has no adverse comment to make concerning the proposals in this section of the Consultative Document.

3.2 The Board has considerable unease over the proposed local policy arrangements for regulation of crofting. The Board considers that such a policy will inevitably lead to conflict in crofting communities.

3.2 With reference to the qualifications of members appointed to the Commission the Board consider that the provisions of Schedule 1, 5(a) are inadequate and should be replaced by the words *persons with knowledge and practical experience of crofting*.

3.3 The provisions of Schedule 1, 15(1) appear to be inadequate. It should be eminently possible, in terms of the commitment to devolving administrative posts, to have a much larger number of Crofters’ Commission posts located in the crofting counties.

### 4. Part 2 Crofts.

4.1 **Purposeful Use.** The Board is extremely uneasy about the introduction of this concept and believes that there must be a strong presumption in favour of agricultural use of crofting land. Environmentally sensitive crofting based agriculture has sustained the ethos of our communities for generations and every effort must be made to continue this.

4.2 **Subletting.** The historical background to the creation of crofts, particularly in the marginal coastal areas of the West Highlands, has been largely ignored in the drive to remove absentee crofters. There are many successors of former generations who created these crofts who are absenteeees by force of economic necessity rather than choice. In those instances where the absentee tenant crofter satisfies the provisions of paragraph 36 (*members of family*), or such a person is bequeathed the tenancy of a croft or is an owner occupier, then the Board believes that the provisions of the **short-term croft tenancies** should apply to such persons.

4.3 **Decrofting.** The Board most strongly urges the Committee to ensure that the proposed legislation provides for a presumption in favour of maintaining inby land in agricultural use. There must be exceptionally good cause shown before the Commission can agree to such land being designated for any so-called Purposeful Use other than agriculture, notwithstanding the granting of Planning Consent by the Local Authority. In particular, the acquisition of crofts by in-comers able to offer large sums of money to the disadvantage of the local crofting community, and thereafter the sale of multiple house sites must be discouraged. We have experienced a number of such transactions in Assynt.
4.4 Assignation. Closely associated with the heading above is the growing tendency for assignation of croft tenancies at inflated market prices to individuals with no latent knowledge or practical experience of crofting. Exposure of crofting to market forces in this way will spell the death knell of our communities.

On behalf of the Board of Assynt Crofters’ Trust I welcome the opportunity of submitting our opinions to you. We sincerely hope that there will be rather more attention paid to the views of our crofting communities in this most crucial of issues than apparently was true of the parallel process when the draft Land Reform Bill was being considered.
SUBMISSION FROM ALISTAIR MACIVER

Thoughts on the Bill

1. I have commented on this bill on many occasions and the more I see and read the more convinced I become that it is a hopeless hotchpotch of bits and pieces, attempting to address a number of relatively simple issues

2. 
   a) What has the Bill been designed to do and the fundamental question one must ask is, is the Bill designed to protect and enhance Crofting or to protect and enhance the opportunities for individual Crofters

   b) What are the difficulties with the present legislation? which problems are arising other than those which are brought about by the abject failure of the Crofters Commission to apply the sanctions currently available to it in respect of owner occupiers and unused, neglected or not lived on crofts. Would not a simple amendment to the 1993 Crofting Act relating to the crofters right to buy to make it clear that the Crofters Commission would be monitoring the situation and that absenteeism, neglect or misuse of the croft, once bought, would result in the owner being required to bring forward proposals to obtain a tenant for the croft.

   c) Reference has been made on a number of occasions to the use or non use of the legislation requiring the landlord of a vacant croft to take a tenant for the croft and I quote “The answer, which was energetically advocated by the Crofters Commission at the time, was that all that the tenant was buying was the landlords rights over the croft. Therefore, in legal hypothesis, the landlord of the croft – the so-called owner occupier-could be required to submit to the regulation of the Commission in order to ensure that the croft was tenanted and other criteria were met. In a telling phrase, Shane Rankin said that, shortly after the 1976 act was passed, the commission decided that it was against the spirit of the legislation to treat the crofter as landlord and abrogated precisely the legal fiction that was the basis for its defence of the 1976 act. I suggest that the evidence that the committee is being given today about proper occupiers is just another rewriting of a legal fiction. If the commission had stuck with its defence of 1976 act the term proper occupier would not be needed”

(Brian Wilson in evidence to the ERDC)
d) “After 50 years of administering 17,000 crofts, one would expect the identification of these of those crofts to be quite clear yet it is not”
(Derek Flyn in evidence to ERDC.)

“However the Crofters Commission has also successfully required the owner of a croft, in such circumstances, to re-let the croft to a croft tenant”
(From the Proper Occupier Explanatory Paper)

Finally a couple of questions.

i) Is it possible to find out exactly how many instances in which the owner-occupier has been required to submit a proposal to re-let since the right to buy was introduced in 1976?

ii) In the new Crofters Commission who will provide the direction and make the decisions?
SUBMISSION FROM THE CROFTERS COMMISSION

Summary

1. The Crofters Commission is a Non-Departmental Public Body (NDPB) of the Scottish Executive Environment and Rural Affairs Department that regulates and develops crofting, advises Ministers on crofting issues and promotes the interests of crofters. Its authority and powers are set out in the Crofters (Scotland) Act 1993.

2. The Commission welcomes the general thrust of the Bill and the opportunities it brings. The Bill proposes that the Commission have the same constitutional arrangements for other NDPBs and it will be directly accountable for its own budget and staff. The Commission will also, subject to Scottish Ministers approval, be able to establish its own grants schemes. This is seen as extremely positive and brings the range of crofting regulation and grant schemes together and allows the Commission to align the support mechanisms and regulatory authority together to maximise effective delivery and make a difference to crofting on the ground.

3. In particular the Commission welcomes specific aspects of the Bill – the opportunity to create new crofts, improvements to the Commission’s regulatory powers, the ability to create local policies and the concept of the proper occupier. Our view on these specific issues and others is set out below.

Key issues

4. **New crofts** – The Commission welcome the ability to create new crofts. This is a visionary and fundamental aspect of ensuring that crofting communities are sustainable. The creation of new crofts in rural areas will allow the younger generation of existing crofting families to remain in their communities and bring up their families there. It also provides opportunities for others to enter the crofting system. These new crofts will contribute to meeting the current high demand for crofts that exists with all new occupiers ensuring continuance of local services vital to all those who live in remote areas.

5. Crofts could be created within the crofting counties by bringing non-croft land into the crofting system. The Commission see a role for the local planning authorities to identify substantial blocks of land that
could be used to create crofts. Land identified could comprise public land and that owned by “not for profit” landlords. There is a need for the Commission to work closely with other public sector agencies such as Local Authorities, Communities Scotland, Highlands & Islands Enterprise and the Forestry Commission. Appropriate resources will need to be available to the Crofters Commission and these other agencies if there is to be progress on this front.

6. The ability to create new crofts outwith the existing crofting area subject to certain qualifying criteria and approvals is also welcomed.

7. The Commission appreciate the merits in allowing crofting tenants to opt out of their right to buy their croft or assign it. It views this as essential if landlords are to respond positively to the suggestion of new crofts being created on their land.

8. **Regulatory functions** – The Commission is acutely aware of the need for effective and strong regulation. It carries out this task diligently at the moment and will continue to do so. During the year 2005-06 it completed some 1700 applications and notifications. Some of this led directly to the resolution of 165 absentee cases and seeking reletting proposals from some dozen absent owners. The Commission notes that the delegation to local crofting communities of crofting regulation is not to proceed. The Commission piloted an exercise to work with communities in Barvas & Brue on Lewis, Sleat on Skye and Farr in North West Sutherland in 2000. The outcome of that exercise was that there was no appetite by crofters to take regulatory decisions in their own areas. The Commission does however recognise the need for crofting communities to be actively involved and to input to the application of crofting regulation in their area. It views as positive the requirement placed on applicants to discuss their crofting proposals with local stakeholders at an early stage but leaving the decision making authority with the Commission. The Commission suggest that consideration be given to an independent endorsement of an application in addition to the comprehensive public notification proposed.

9. The Commission welcomes and supports the simplification of some regulatory functions such as those relating to the reorganisation of croft land which it sees as an essential development tool. The removal of the requirement for landlords’ prior consent to the division of a croft is a positive move.

10. The ability for the Commission to deal with the neglect of croft land on a complaint from the landlord is welcomed but the Commission would also wish to act on such a complaint from a member of the crofting community where any complaints are made on the basis that they would have an adverse effect on the complainer’s crofting interests. The volume of such complaints is not known but if these become burdensome the Commission would have to be resourced
appropriately if they are to respond positively to such complaints. The ability for the Commission to have discretionary powers to take action against shareholders who do not comply with local grazings regulations is also welcomed.

11. The ability for the Commission to have the discretion to make apportionments for specific periods and to periodically review their continuing use is viewed as positive.

12. Local policies – The ability to develop area policies to resolve local issues is welcomed. However, the Commission feels the Bill’s definition of “area” is too small to manage such a process and feel a looser reference to a “crofting district” to be more practical. Our view is that the Commission is best placed to put in place a scheme to appoint persons to a panel to engage local communities without reference to Scottish Ministers. In order to attract the right calibre of people to serve and support the Commission on local policy groups the Commission would wish scope to make payment to them.

13. Proper occupier – The Commission support the introduction of the proper occupier. This recognises the fact that owner-occupiers exist and contribute to the crofting community. It is essential that the proper occupier be treated broadly in line with tenants i.e. that they live on and work their croft or face the Commission imposing a tenant on them. Also, proper occupiers should come under the same neglect scrutiny as tenants. The concept of proper occupier identifies the need for the Commission to be automatically updated by the Land Register of the change in ownership of croft land. This will allow the Commission to effectively regulate both tenanted and owned croft land. Proper occupiers should not be allowed to divide their croft by selling it off in parts without Commission consent as this leads to croft fragmentation and brings into question the viability of a croft from a practical point of view.

General issues

14. Assessors – The Commission are pleased to see the continuance of its ability to appoint Assessors. The Committee may wish to note, that contrary to what other parties may have told it, it is the Commission who appoint Assessors, they are not elected. In the past the appointment process has been on the nomination of individuals from local grazings committees.

15. Purposeful use – The ability for crofters and proper occupiers to be able to use the croft for a purposeful use as set out in the standard conditions is welcomed along with the opportunity for shareholders to undertake wider development activities on common grazings.
16. **Crofting Community** – The Commission is broadly content with the definition set out in the Bill but further consideration needs to be given by local panels to allow for local interpretation and regional and historical variation.

17. **Short term tenancies** – The removal of this opportunity for owner-occupiers is welcomed so as to prevent misuse.

18. **Land Reform Act** – The provision in the Bill to amend the Land Reform Act to allow crofting communities to buy out leases, including interposed leases is welcomed.
SUBMISSION FROM PUBLIC AND COMMERCIAL SERVICES UNION

Introduction

1 All staff employed at the Crofters Commission are members of the civil service and seconded to the Commission from the Scottish Executive.

2 PCS is the trade union representing administrative civil servants employed by the Scottish Executive. The North of Scotland Branch represents those seconded to the Crofters Commission in Inverness.

3 PROSPECT represents those Scottish Executive professional staff seconded to the Commission and the local representatives endorse this evidence.

4 It is the declared intention of the Scottish Executive that staff at the Crofters Commission should cease to be members of the civil service. This despite an undertaking by the Minister for the Environment and Rural Affairs that: “There will be scope for existing staff to opt to keep their current Civil Service status by remaining in post on a secondment basis” ANNEX 1. This undertaking also appeared in the White Paper on Crofting at Paragraph 2.5.

5 Neither Ministers nor civil servants have ever asked staff seconded to the Crofters Commission for their views on exclusion from the civil service. No representative of the Scottish Executive or Commission management has met with Commission staff on this subject since 2002. Two meetings by Scottish Executive with Scottish union officials have been employed only to insist that there is no alternative and warn against any opposition by seconded staff. Undertakings by the Scottish Executive to advise and discuss the detail of proposals have not been honoured. The Commission Board has not commented on the subject.

The Bill is Silent

6 The Bill provides at Schedule 1 Paragraph 11 for the Commission to have the power of appointing staff. No mention is made of current staff, serving civil servants. Previous legislation establishing Non-Departmental Public Bodies has addressed the question of current civil service staff with provisions covering transfer, future employment and pensions – ANNEX 2 Paragraphs 14 to 16. This inclusion in a Bill enabled Parliament to determine in the context of the Bill as a whole
whether proposals for staff were reasonable and fair. In this Bill, no such provisions are presented, thus excluding detailed discussion. In responding to the draft Bill, PCS and PROSPECT asked why this is the case but received no answer other than the remark in the Analysis of Responses that we have a “long history of opposition to change.” This charge is not true and has been refuted.

7 The Bill provides for Transitional Provisions to be introduced by Ministerial regulation. It is likely that arrangements for staff would be presented under this section. Unlike other sections of the Bill, there is no discussion of this power in the accompanying Explanatory Notes or Policy Memorandum. Mention of Transitional Provisions is made on Page 7 of the Delegated Powers Memorandum, but provides no enlightenment as to the position of staff.

8 No explanation has been offered for this change of approach from previous practice in NDPB legislation.

Staff Concerns

9 For reasons given in the ensuing paragraphs of this section, staff at the Crofters Commission are concerned at the intention to transfer their posts from the civil service to direct employment by the Crofters Commission.

10 There are few civil service posts in the Inverness area, and even fewer of these with the Scottish Executive. Most staff would therefore be deprived of choice if faced with direct employment by the Commission as there would simply not be enough transfer opportunities locally.

11 The Commission has existed for fifty years and only continues as successive Ministers have decided that there remains a crofting regulatory role for government. There is no guarantee that this will hold true in the future. The Finance Committee of the Scottish Parliament heard in 2005 that the Executive would be unlikely to be in a position to afford employment to people from outside, negating earlier moves to allow NDPB staff to seek Scottish Executive posts. Employed by the Commission and thus excluded from the civil service, staff would be denied access to Executive posts.

12 The Commission cannot depend on always making available the number of jobs currently held. The “On the Ground Programme” calls for initiatives among NDPBs to share facilities and reduce costs in front desks services, office management etc. The emergence of this programme coincides in Inverness with suggestions that the new SNH offices will have unfilled space and that the Commission’s current offices are to be redeveloped or demolished. Excluded from the civil service, staff in the Crofters Commission whose posts would thus become surplus to requirements on sharing of premises would be denied Executive posts.
13 Nor is there a guarantee that the Commission will remain in Inverness. The introduction of new legislation would require a review of location. As SNH has demonstrated, it is very difficult for staff with family responsibility to move far from a partner’s place of employment, children’s schooling, nearness to aged parents etc. Again, exclusion from the civil service would prevent redundant staff obtaining Executive posts.

14 The Commission is a small organisation with limited scope for careers. Exclusion from the civil service would prevent staff from seeking Scottish Executive posts to gain wider experience and promotion. It would also inhibit or exclude secondment into the Commission from the Scottish Executive, so preventing the transfer of experience and ideas on which much of the effective development of individual government bodies depends in practice. This is particularly true in the case of the Commission, a small body of 40 administrative staff, 5 professionally qualified staff, 5 specialised development managers and 4 staff employed on the Executive’s cattle farm. Taking part-time employment into consideration, this translates into 50 posts. This compares poorly with Scotland’s other executive NDPBs, the smallest we have identified being the Royal Botanic Gardens and the National Library of Scotland with around 150 and 230 employees respectively.

15 Experience of previous transfers out of the civil service in Scotland show that pay and conditions may worsen in comparison with employees of the Scottish Executive. For example, Scottish Executive starting pay in the A3 grade – the largest grouping of Commission employees – was £14,000 in 2005. In the Royal Botanic Gardens A3 starting pay was £13,184 and in the National Library of Scotland £13,222 (the Executive figure has since risen to £15,968, but we have no comparative 2006 figure available for the NDPBs quoted).

16 Finally, the Scottish Executive affords to Commission staff clear procedures to rectify unfair treatment or inappropriate behaviour by Commission management. This protection would cease.

No Reason for Change

17 No good reasons have been advanced for excluding Commission staff from the civil service. We have been advised by the Executive that there is no legal requirement for staff of an NDPB to be excluded from the civil service – ANNEX 3. The question of resolving responsibility for financial accountability rests between the Executive, the Commission’s new Chief Executive and Board and does not depend on whether or not staff are civil servants. Without explaining why, the Deputy Minister for the Environment and Rural Affairs has stated that the hands of the Commission Board cannot be “fettered” with regard to staff – ANNEX 4, but at the same time, the Bill, where it does mention appointment of staff at Schedule 1 paragraph 11, also specifically
requires Ministers to approve staff pensions, allowances and gratuities, and provides a power of direction for Ministers on appointment of staff, terms and conditions and pay. Elsewhere the Bill proposes to “fetter” the Board through Ministerial powers on 28 separate occasions.

18 Without giving argument in support, the Executive has presented the exclusion of staff from the civil service as an unavoidable consequence of the Bill changing the status of the Commission. The Commission is already an NDPB with full authority legally vested in the Board. The current position is that as secondees from the civil service, staff are answerable to the Secretary of the Commission, who in turn is answerable to the Board, the latter in their turn being answerable to Ministers. Loss of civil service status changes none of this and would not enhance control by the Board of policy or service delivery. The sole change proposed in the Bill to the Board’s relationship with staff would provide for the delegation of Board authority to staff. Practical delegation is already a working feature of the Commission, the Board considering less than 10% of 2000 applications received annually and the Chairman authorizing the great majority of the remainder as recommended by staff without himself having sight of the case papers. Commission Orders and Directions are now authorized by staff rather than by a Commissioner and the Secretary.

19 The Finance Minister wrote on 19 December 2005 that “once this legislation is introduced” the staff of the Commission would be faced with the choice of giving up their posts or becoming Commission employees - ANNEX 5. The Deputy Minister for the Environment and Rural Affairs previously wrote on 2 November 2005 that it would be open to the new Commission to make arrangements for existing staff to remain on secondment – ANNEX 4. While the compatibility of these statements is open to question, Ministers are at least consistent that on day one of the “new” Commission, the staff would be civil servants. This acceptance of civil service status for a period post-introduction of the new legislation logically disposes of the argument that Commission staff could not be seconded from the civil service.

20 The lack of substance to the argument for loss of civil service status can also be seen in the history of other government organizations. Communities Scotland, originally an arm of the Scottish Office, was changed into an NDPB and the staff transferred from the civil service. Now it has been returned to the Scottish Executive and the staff once more made civil servants, but nothing in their work has changed to require such transfers. It is clearly important that the Health and Safety Executive be independent of Ministers’ influence in carrying out its duties, but staff nevertheless remain civil servants. The same is true of the Food Standards Agency.
Solution

21 We suggest that the solution is for the Bill to provide that civil servants at the Commission may retain both their posts and their membership of the civil service.

Conclusion

22 There are evident good reasons why Commission staff should retain membership of the civil service, and none advanced as to why not.

23 In making no provision for current staff in the Bill, the Scottish Executive acknowledge that the Parliament should not be bound by Westminster precedents. No argument has been offered or need demonstrated why staff at the Commission may not remain civil servants. That this has been the pattern of the past for NDPBs created by Westminster is no reason that it should be the pattern of the future for an existing NDPB in Scotland.

24 Our Parliament was set up to provide new and innovative answers to Scottish problems. This is one occasion when such an answer seems appropriate.
ANNEX 1

Crofters Commission

S1W-6040 - Rhoda Grant (Highlands and Islands) (Lab) (Date Lodged 5 April 2000) : To ask the Scottish Executive what has been decided in the light of the recent consultation on the Policy and Financial Management Review of the Crofters Commission.

Answered by Ross Finnie (6 April 2000): The recent review identified the need for modernising the Commission's constitutional arrangements, to meet new standards of public accountability, by converting the Commission into a modern NDPB or into an Agency. In the light of the balance of views expressed in the responses received, and following discussions with the Crofters Commission, I have concluded that the NDPB model is the appropriate one. When we have the opportunity we shall legislate to recast the Crofters Commission with a modernised Board structure and its own staff and budget. There will be scope for existing staff to opt to keep their current civil service status and to remain in post on a secondment basis. These are technical changes that will not change the essential character of the Commission.

The other issue was whether the Commission's development functions should be integrated with other support from Highlands and Islands Enterprise. The consultation process has demonstrated a strong preference for maintaining separate specialist support for crofters, and accordingly I am content that these functions stay with the Commission. At the same time, however, I expect the Commission and HIE to work increasingly closely together.
subject knowledge or experience of which would be of use to the Board in exercising their functions.
(4) The Secretary of State shall appoint one of the trustees to be chairman.
(5) Subject to the following provisions of this paragraph, a trustee or chairman shall hold and
vacate office in accordance with the terms of his appointment, but no trustee shall
be appointed for a period of more than 5 years.
(6) A chairman or trustee may resign his office by notice in writing addressed to the
Secretary of State.
(7) If a chairman ceases to be a trustee he shall also cease to be a chairman.
(8) A person who ceases to be a trustee, or ceases to be a chairman, shall be eligible for
reappointment.

Staff

14.-(1) There shall be a Keeper of the Royal Botanic Garden, Edinburgh, who shall be
known as the Regius Keeper, and who shall be appointed by Her Majesty on such terms as
Her Majesty may determine.
(2) The Regius Keeper shall be responsible to the Board for the general exercise of their
functions.

Reports

15.-(1) The Board may appoint such employees as the Board think fit.
(2) The employees shall be appointed on such terms and conditions as the Board may
determine.
(3) A statement under sub-paragraph (2) shall be subject to the approval of the
Secretary of State given with the Treasury's consent.
(4) Employment with the Board shall be included among the kinds of employment to
which a scheme under section 1 of the Superannuation Act 1972 can apply, and accordingly
is Schedule 1 to that Act (in which those kinds of employment are listed) "Royal Botanic
Gardens, Edinburgh" shall be inserted after "National Portrait Gallery".

Part II

Royal Botanic Garden, Edinburgh

Data

11. The Board of Trustees of the Royal Botanic Garden, Edinburgh shall be a body corporate.

12.-(1) Subject to sub-paragraph (2), the Board shall not be regarded as the servant of
the Crown or as enjoying any status, immunity or privilege of the Crown.
(2) The trustees and their staff shall not be regarded as Crown servants and the
property of the Board shall not, subject to section 20 of this Act, be regarded as property of, or held on
behalf of, the Crown.

Membership

13.-(1) The Board shall consist of: 6 or less than 5 and not more than 9 members (referred

Dear Joe

CONSULTATION ON DRAFT CROFTING REFORM (SCOTLAND) BILL SUBMISSION BY THE NORTH OF SCOTLAND BRANCH, PCS

I refer to your letter of 26 September to Dorothy Tapp to which I have been asked to reply. I am sorry that work commitments have delayed this response to your letter.

You state that it is unclear why the draft bill cannot contain a provision similar to the one in the Crofters (Scotland) Act 1993 which provides that "the Secretary of State may provide the services of such officers as the Commission may require". In addition, you ask for a copy of the legislation which prevents the Bill or subsequent Regulations providing that civil servants employed by the Scottish Executive may not continue on secondment to the Crofters Commission once the proposed crofting legislation comes into place. On this latter point, there is no such legislation.

It may be helpful if I explain why the draft bill does not contain a provision on the lines that you suggest. As you know, the changes proposed in the draft Crofting Reform Bill will re-establish the Crofters Commission as a modern Non-Departmental Public Body (NDPB) with full executive functions and responsibilities. This includes the Commission having full control over and responsibility for the staff and resources that are required to fulfil its functions. It is consistent with the arrangements that apply to other executive NDPBs. In view of this, you will appreciate that it is not possible to include a provision such as the one suggested as it would have the effect of fettering the new Commission in relation to staffing matters.

I acknowledge that some staff at the Commission are concerned about their civil service status. Ministers have already made a commitment that, should the new Commission wish to make arrangements for existing staff to remain on secondment terms, it would be open to them to do so. I expect that the existing staff will be offered posts in the new organisation on terms and conditions at least as good as they currently enjoy. Those staff based at the Commission who do not accept an appointment with the new body will remain Scottish Executive staff and we shall endeavour to find posts for them elsewhere within the Scottish Executive or other Departments in the civil service.
You copied your letter to Mrs Parr to Sarah Boyack MSP, Fergus Ewing, MSP, Maureen Macmillan MSP, Mary Scanlon MSP and Lynn Henderson and Jenni Young of PCS. I am also copying this letter to them.

Yours sincerely

Mrs J M Clemie
ERAD HR Manager
ANNEX 4

Crofting

S2W-19777 - Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP) (Date Lodged 10 October 2005): To ask the Scottish Executive whether it will include in the draft Crofting Reform Bill a provision such as that contained in Schedule I of the current Crofters Scotland Act 1993 which provides that "the Secretary of State may provide the services of such officers and servants as the Commission may require" and what its intentions are in respect of the future of its staff currently seconded to the Crofters Commission.

Answered by Rhona Brankin (2 November 2005): No. The changes proposed in the draft Crofting Reform Bill will empower the Crofters Commission to employ its own staff. It is not possible to include a provision such as the one suggested as it would have the effect of fettering the new commission in relation to staffing matters. Ministers have already made a commitment that, should the new commission wish to make arrangements for existing staff to remain on secondment, it would be open to them to do so. I expect that the existing staff will be offered posts in the new organisation on terms and conditions at least as good as those they currently enjoy. Those staff based at the commission who do not accept an appointment with the new body will remain Scottish Executive staff and we will endeavour to find posts for them elsewhere within the Scottish Executive or in other parts of the civil service.
ANNEX 5

Civil Service

S2W-21549 - Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP) (Date Lodged 8 December 2005) : To ask the Scottish Executive whether it considers that it may be exposed to legal action, particularly under employment law or the European Convention on Human Rights, if any employee of the Crofters Commission is required to surrender civil service status.

Answered by Mr Tom McCabe (19 December 2005): Legislation is underway to change the status of the Crofters Commission. Once this legislation is introduced, staff of the Crofters Commission will be given the choice to transfer to the new non-departmental public body, or to retain their status as civil servants. Those staff based at the commission who do not accept an appointment with the new body will remain Scottish Executive staff and we will endeavour to find posts for them elsewhere within the Scottish Executive or in other parts of the civil service. We therefore do not foresee any member of staff currently employed by the Crofters Commission being required to surrender their civil service status.