The Committee will meet at 2.00 pm in The Chamber, Assembly Hall, The Mound, Edinburgh

1. **European Documents:** The Committee will take evidence from the Scottish Executive regarding European Documents SP 470 and SP 484 proposing regulations on the registration of bovine animals and the labelling of beef and bovine products.

   Link to Papers distributed for meeting of 14 March 2000.

   [http://www.scottish.parliament.uk/official_report/cttee/rural-00/rap00-06.pdf](http://www.scottish.parliament.uk/official_report/cttee/rural-00/rap00-06.pdf)

2. **Land Reform:** The Committee will take evidence from Mr Andy Wightman and Dr Maurice Hankey on land reform issues.

   Link to papers submitted by Mr Wightman


   Paper by Scottish Landowners Federation attached by email

3. **Subordinate Legislation:** The Committee will consider the following negative instruments:
   - The Dairy Produce Quotas Amendment (Scotland) Regulations 2000 (SSI 2000/52)
   - The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000 (SSI 2000/53)

   Executive Notes and a Regulatory Impact Assessment for SSI 2000/53 are attached by email. SSI's not yet available on TSO website.

4. **Inquiry into the impact of changing employment patterns on rural communities:** The Committee will consider a draft paper by Professor Mark Shucksmith.
Scottish Landowners’ Federation
response to
“Land Reform – Proposals for Legislation”
(Community Right to Buy)
March 2000

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EXECUTIVE SUMMARY

- The Scottish Landowners' Federation does not believe that the White Paper "Land Reform - Proposals for Legislation" makes an adequate or sufficiently detailed case for the Scottish Parliament to introduce a right to buy for community groups.

- Accepting that the introduction of this right may be the will of a duly elected Scottish Parliament, the Federation wishes to express concerns about the introduction of such a "right", detailing where we believe changes to the proposals should be made or asking questions about the unintentional effects on the people, businesses, wildlife and communities which characterise rural Scotland.

- The SLF believes that both community interest in purchasing land and public interest in access to the countryside are major issues in their own right and should not be combined in a single piece of legislation, nor that either should be rushed to achieve inclusion in "flagship legislation" without full and proper consideration of the issues associated with each.

Community Right to Buy

- The SLF recognises a growing interest by communities in the ownership and/or management of land. The SLF believes that there are numerous means whereby these interests can be developed in partnership with other forms of landownership and for mutual benefit.

- The principle of a right to buy for community groups is flawed on the basis that it assumes from the outset that a potentially small group within any definition of a community will be more effective, at the end of the day, in delivering benefit or sustainable development to that community than an individual, private or institutional purchaser or over existing management. Ownership by a community group does not guarantee the delivery of such benefit or development - indeed the indications are that a community group may simply seek to replace from public funds the investment and initial purchase value of a property which a private individual currently meets through their own resources.

- This failure to guarantee a net benefit as an end point is indicated by a failure of the White Paper proposals to explain how a community group will be monitored to ensure such delivery. The SLF believes that if a group does not deliver benefit, then it is technically in breach of the right by which it came to acquire the land in question.

- The SLF supports the definition of community proposed in the paper, this being those who work on or live on the land in question. This is the "first community" identified by the SLF in its response to "Identifying the Solutions", and are those most affected by a change in the ownership of the land. The SLF urges very strongly that attempts to broaden the definition of community are resisted, as these are likely to militate against the true policy objectives of the proposal.

- The ability of a community group to cherry-pick the best land from an estate or farm is a major concern to the Federation, though the extent of such cherry-picking is influenced by how rigid or otherwise the registration of communities, through community groups, is to be.
The Federation recognises the potential for small groups, potentially of newcomers to an area, influencing a community into a purchase which it might otherwise not wish to contemplate. The concept of a minimum residential qualification is also proposed.

The SLF expresses grave doubt about how easy it will be to define a standard constitution for community groups to follow. Concern is expressed about how the subsequent performance of a community group will be monitored, and by whom.

In terms of the thresholds within the community before the different milestones are passed, the proposal of a 10% commitment for registration is totally inadequate and undemocratic. The Federation suggests a minimum of 25% of the eligible community at the stage of registration, 50% at the stage of exercising the right to purchase and a clear majority at ballot stage once the purchase price is set. It is expected that these percentages apply to the "live on/ work on" community as a whole, not to turn out at any ballot. It is also assumed that ballots will be properly conducted and secret. Concerns are expressed about the implications of a right to buy for sections of the community which do not support the process at different stages.

The impact of registration is considered to be much more significant than the White Paper proposes, acting as a major deterrent to further investment in the land, and potentially interfering with voluntary sales to communities or individuals within that community. There is a belief that landowners may attempt to protect themselves from the creation of a community or restrict one which already exists in order to minimise the risk of such registration. Such actions are at variance with many shared goals of rural development, but are nevertheless understandable.

Major concerns are expressed about the potential for community registrations to impact upon legitimate transfers of land within family groups. It is unclear whether the Scottish Executive wish to exempt such transactions. Transfers of land through share dealings are complicated and the desire to address individual situations should not complicate wider business transactions. Even against a background of compensation payments, the restrictions on an individual to sell land to whom he wishes when he wishes, is, in the SLF's view, a major breach of property rights and has no precedent.

Concerns are expressed about the procedure involving the Government Appointed Valuer, the basis for his valuation and the entire delay in the sale of a property as a result of the community interest. Instances are given where the delay in sale may be counter productive to the responsible management of a property in the meantime and of other financial implications for the rural community.

A range of issues is raised in relation to heads of claim for compensation arising from the process, and comparisons made with a normal sale where missives are signed and purchaser and vendor being committed to a sale. Clearly the potential for a sale to fall through after 12 months is a major concern for the land market in Scotland.

Responsible consideration of a community right to buy must involve examination of the process once a community group has been successful in acquiring a property. Views are expressed on how the expectations of the community group are delivered, and via what means of funding. Regard must be given to the way in which a
community can sell off parcels of land, how individuals might benefit from such proposals and ultimately what happens if the community itself wishes to cease as an owner.

- A number of issues relating to the hierarchy of interests in land are raised, in particular the interests of lending institutions whose security and propensity to lend may be seriously eroded by the registration of a community interest and the prospect of a delayed sale.

- Concluding its response on the community right to buy the SLF proposes a range of alternative scenarios within which landowners may be motivated to be part of an acquisition by a community, through bringing forward voluntary sales on terms which allow mutual benefit to be delivered. Where such opportunities are not taken by the landowner, the right to buy would come into effect, but where it is not taken up by the community at a time of offer, then this would significantly postpone any future opportunity for a community to register an interest in the land in question.
1. Background and SLF Approach

The Scottish Landowners’ Federation is the officially recognised body representing the views of those who own rural land in Scotland. The Federation and its membership welcome the opportunity to comment upon the latest in a sequence of consultation papers on Land Reform in Scotland. We have responded in detail to each of these previous consultation papers and believe that many of our views expressed at that time are still valid at this stage in the process.

The approach of the Federation in responding to this paper is based upon two major objectives of the Federation as defined in our Constitution: firstly "to promote high standards of management and use of land" and secondly "to ensure that legislation and government policies affecting landownership and use are prepared with proper consideration for the responsibilities and rights of landowners, in addition to the well being of rural communities, the environment and the wider public interest".

In January 1999 the Federation published a draft Code of Practice for responsible land management and to date this document remains the only significant statement of good practice in landownership and use. This voluntary Code of Practice clearly recognises the responsibilities associated with the ownership and management of land and urges the consideration of the interests of the local community when considering land use and rural development proposals. Furthermore, it encourages partnership with neighbours and other members of community groups in delivering benefit to the local community.

The SLF welcomes the interest of community groups in becoming landowners in their own right. We hope, however, that all types of landowner will be afforded equal opportunity to bring their enthusiasm, expertise and resources into the landownership scene in Scotland and that the "system" will not be biased in any direction - a level playing field in theory and practice!

It is assumed in connection with a community right to buy that the determining factor in the policy drive for this proposal is the view expressed by Lord Sewel at Oban in October 1997, which was that the availability of land is a major constraining factor to the opportunities for rural communities and members thereof, to secure a more prosperous and sustainable future. Land is only one of the main factors of production in any economic development - the others being capital, labour, and entrepreneurial ability. Land Reform based upon an un-realistic assessment that access to land alone is the constraining factor in rural development is an invalid process. Community ownership is no different to private individual or family landownership if the financial resources necessary to go with the land are not also accessible. This raises the consideration that in many instances availability of land per se is not the limiting factor on a community wishing to buy land in its locality, but it is a shortage of capital. The shortage of capital is probably a constraint to most landowners, and to most businesses throughout Scotland, the UK and Europe. As an issue it is not appropriate to address this through a right of community to buy land within a restricted market - rather the issue of access to capital should be addressed.

The SLF also believes that its approach to these proposals should be framed against the First Minister's assurances that "good landowners should have nothing to fear" from the proposals. A community is unlikely to have cause to register an interest against a good landowner, but in case the good landowner sells on to someone who
is not as benevolent or responsible. Nevertheless, the good landowner is left to face the consequences of a registration and protracted sale.

2. Overview

The two main sections of the White Paper address the concept of a community right to buy land when it comes to the market and a public right of access to all rural land in Scotland, with certain constraints and exceptions. It is the general view of the SLF that neither the White Paper nor its preceding consultation papers have adequately provided a case for or mandate for such a right, as distinct from an argument for enhanced and facilitated opportunities under each heading. The overall policy objectives, to allow communities access to land and the public greater opportunities for access and recreation are not disputed, nor unsupported. The issue is whether a sufficient case has been made for this to be created as a "right" rather than other means.

The creation of "rights" by a new Scottish Parliament has obvious political attractions in marking the arrival of the first Scottish Parliament for 300 years. If the introduction of such rights are political imperatives then it is equally imperative that the mechanisms surrounding each clearly define and manage the way that these rights can be exercised. This implies due regard to the responsibilities or corresponding duties which must run with any such right and with regard to the impact such exercise might have on other aspects of the rural economy, community and environment. Again the SLF does not believe that the provisions outlined in the White Paper are sufficiently clear to suggest that these associated issues are satisfactorily or enforceably proposed: - balance is absent!

We hope that the general and detailed comments which follow will help the Scottish Executive address these concerns, confusions and deficiencies.

3. Community Right to Buy - General Comment

Whilst noting that the Scottish Executive is open for comment on a whole range of issues, the Federation is concerned that as a basis for consultation, the White Paper is potentially misleading. On the community right to buy the mechanisms and implications of such a right are highly conditional upon one or two definitions and thresholds. One definition of community is proposed, but a comparatively small change in this could radically affect the way such a right might in practice be used.

Whilst the definitions used give a general framework for the policy objectives to be met, lack of detail leads to the identification of numerous co-lateral issues. Primary amongst these is the lack of any indication of how objectives of sustainable development and community benefit are to be assessed and monitored. Many of the concerns about how community groups might be comprised may be allayed by more clarity on this issue. It is clear, for example, that the proposals would not give a single tenant farmer the chance to purchase his farm, but it might be construed that a group of tenants could collectively buy their farms, and remain as tenants to the Community Trust. What would constitute "benefit" in such a case - could the Trust pass benefit back to individuals by low rents, or would some positive, proactive benefit have to be delivered?
The community right to buy assumes from the outset that a potentially small group within any definition of a community will be more effective, at the end of the day, in delivering "benefit" or sustainable development to that community than an individual, private or institutional purchaser. This does not detract from the possibility that it may, but does not guarantee that it will. The Federation does not deny that there have been, and in some cases there are still, instances of poor landownership in private hands. Such instances are not widespread and equally the pioneering examples of community ownership and management are as yet unproven in their record of long-term sustainability and success. Notwithstanding our concerns about the potential infringement of an existing owner's ability to sell his property to whom he wishes, when he wishes, the SLF believes that it is irresponsible for Government to grant sweeping and unconditional rights when track records do not indicate any guarantee of successful delivery.

Indeed, the promotion of community interest in the way proposed replaces the willingness of a private owner to provide capital for purchase and investment with the expectations given to community groups that if they are interested all this capital will be provided from the public purse in one form or another. The SLF would welcome greater consideration of opportunities for communities to compete in the open market when land comes forward for sale.

It is interesting to regard the White Paper proposals for a community right to buy as effectively combining options LO2 and LO9 in the Land Reform Policy Group's Paper "Identifying the Solutions" in September 1998. In Recommendations for Action (January 1999) the two proposals remain distinct. The understanding for the merger of these two proposals into a single piece of legislation is at least in part understood and referred to in para 4.1 below, but it is nevertheless relevant to refer to the "Identifying the Solutions" Paper and the analysis of these two options in that paper. The merger of the proposals does however broaden the area over which the original ideas of "rights" were proposed - i.e. the fragile rural areas.

SLF considers that community interest can be clearly distinguished from the wider public interest, and moreover that the two interests often do not coincide in practice. Earlier references to "public" interest have been translated into the granting of "community" rights and again it is arguable whether a right for a community body to acquire a piece of land is necessarily in the "public" interest. It might be argued that these proposals use public money to transfer ownership from an individual or family into a potentially small and inwardly focussed community group. Such an outcome is feasible within the detail provided in the White Paper. This viewpoint might merit consideration against the background of the Executive's wish not to contravene ECHR legislation. It is also interesting to note the Executive's desire to continue with these proposals when the original analysis clearly showed the bureaucratic and cost implications of these two options, and elements of concern that there may be measures taken by landowners to protect themselves from such threats: - again against the background of a non guaranteed overall benefit.

Throughout this response, reference to "rights" does not imply SLF acceptance of such rights, but provides comment on how the mechanisms surrounding the decision to introduce such rights might work, and the possible consequences thereof.
4. The Community Right to Buy - Detailed Comment

4.1 The Land

- The Federation notes the proposals that the community right to buy would apply to all land in rural Scotland, both private and publicly owned. There is clearly some indecision in terms of defining "rural" Scotland, but both of the suggested options exclude the logic of also applying such a right to land sales within built up areas of Scotland where, equally, urban communities may find themselves constrained by not having access for playgrounds and other facilities. However, this is a reasonable response to the difficulties of defining particular thresholds in terms of size or value of properties which might have fallen into scope of the powers, but where there was no probable community interest. On the other hand, this extends the possible exercise of such a right to areas of Scotland where there has hitherto been no particular community interest in land and where the opportunity of such a right, as is proposed, might create community interest which hitherto had not arisen.

- It is apparent from the wording of the paper that the registration of any interest in land need not apply to a whole property, but allows the community to identify parts of a property which might be of value to it. There is again a logic in this approach, but it must be recognised that in defining which land is of main interest to the community, the proposals allow the community to "cherry-pick" the best bits of an estate and effectively leave the remainder for the landowner to dispose of on his own and at such time as the success or otherwise of the community bid has been established. There is potential for land which might have development value (and indeed on which development options may already exist) to be earmarked by the community. The ability of a community to cherry-pick or take out highly valued parts of a property erodes the value and working management of the existing land holding and the process is one of injurious affection.

- One application of the community right to buy may be to facilitate the acquisition of small sites on the edge of a town or village for community facilities, playing fields etc. Is this "development" or "benefit"? It is not apparent that this benefit to a community would necessarily be addressed under these proposals by virtue of no qualifying community body being able to register an interest in that land under present proposals. If this is the main intended application of these rights, the SLF suggests that there must be other, less bureaucratic and disruptive means of addressing the goal.

- The SLF understands that the registration of an interest in a piece of land will "capture" any other rights running with the land at the time, and property on it. If sporting rights or standing timber are in other ownerships at the time of registration (or sale?) then ownership or sale of these would not be affected by the registration. Should a landowner in the first case wish to sell the land but not the sporting rights, or the sporting rights without the land, what is the position?

4.2 The Community

- The definition of a community used for the purpose of the proposed right is currently the First Community defined by the Federation in its response to the "Identifying the Solutions" Paper. Those who work on and live on any
particular piece of land are indeed those whose livelihoods and amenity are most impinged upon by a change in ownership of that farm or estate. As such these are logically the people to whom such a proposed right should primarily, if not exclusively, be addressed.

- The SLF recognises that there are, and will be, calls for this definition of community to be significantly broadened to encompass, for example, those who live in adjoining villages or have some other employment based linkage to what happens on a particular area of land. Equally, the SLF is aware of suggestions that this definition of community would not have empowered the communities of Eigg or Knoydart to acquire their properties. **The SLF urges, very strongly, that attempts to broaden the definition of community are resisted.** In the first case there are other means whereby those living in villages can have an input to the way land is managed in their locality, the foremost being the concept of voluntary Codes of Practice for landowners, and this is already happening on many estates. In the latter, legislating for rare or occasional situations by the broadening of such definitions might have major impact upon the intended scope and impact of the legislation. **For example a broadening of the definition to include the village adjoining a piece of land could result in the villagers outnumbering, and effectively acquiring the property over the heads of those most directly involved, i.e. those who live on and work on the land in question.** In terms of the policy objectives of this paper, this is arguably of no different impact to the purchase of the property by an outside party.

### 4.3 The Community Body and its Objectives

- The White Paper suggests that a group comprising 10% of the "community" should have the ability to form a properly constituted body and to register an interest in a piece of land of significance to it. Beyond the definition of where the group lives and/or works, the possibility is opened up of its registering an interest in a separate piece of land of significance to it. The White Paper recognises the legal difficulties of such an approach - the Federation would stress the practical implications of justifying this interest even if this approach could be enshrined in appropriate wording.

- It is noted that there is no minimum size of community body defined and this in itself has implications for the core which represents 10% of the whole. In effect, a community of 20 individuals could be represented by two of their number and this clearly opens up the possibility of single households having an influence in a broader, but nevertheless small community. The SLF is concerned about the ability of "forceful characters" or politically-inspired individuals, or someone with a score to settle against a landowner over perhaps a historical access or housing issue, being able to constitute a community group with the purpose of frustrating any future sale by that landowner.

- Looking at the interpretation of "those who live on and/or work on the land in question" it is understood that reference may be used in terms of the residency criteria being deemed fulfilled by being shown on an electoral roll. In addition to the obvious agricultural tenants this would also therefore embrace tenants in housing, (either on assured or short assured tenancies), but it is not assumed that anyone in holiday cottages at any point in time would qualify. The Federation suggests that some concept of residency or family connection in a community should be introduced to allay the potential impact of newcomers to an area
deeming to represent a more established community. Perhaps residency for 3 years within the particular community would make for some stability in this process.

- In terms of employment, it is understood that National Insurance records would be looked at and it is assumed that such employment should be current at the time of registration. This should embrace regular full-time and part-time employees, but might reasonably be expected to exclude seasonal or casual labour who did not otherwise live on the property.

- In para 2.5 the White Paper refers to "most of its members...live on /work on", and asks whether it is "representative of and supported by the local community". In 2.8 it states "Community members must constitute a voting majority". The SLF regards each reference to community to apply to the "live on/work on" definition, else the phrases become open-ended in terms of impact. Clearly the possibility exists within the proposals at present for a number of "other" individuals or bodies to join with the first community, but not taking control.

- These definitions also raise a question about the "land in question". In terms of registering an interest in part of an existing farm or estate it is unclear whether the relevant community are those who live on and/or work on that part of the estate, i.e. that in which the interest is registered, - or whether the community of the whole estate can register an interest in a small part of it, perhaps only the housing stock. Such a registration would arguably not be either in the interests of the development of the community and would equally infringe the principle espoused by Lord Sewel which was that access to the land was the motivating policy. Land Reform should not simply become a question of a residential tenant's right to buy their property, albeit as a collective group buying all of the residential properties rather than on an individual basis.

- The White Paper states that the community body should be properly constituted and refers to model constitutions being available based on a company limited by guarantee. The SLF expresses grave doubt about how easily such a constitution will be to draft initially, and to monitor subsequently. A company by its nature delivers benefits to shareholder members and directors; care therefore needs to be taken in developing the Memoranda and Articles of Association.

- The constitution of the body must initially define those who constitute the community and this may be possible at the time of constitution or registration, but may rapidly become out-dated. It is required to show financial probity at the time of constitution and registration, though ironically there are no financial obligations on the community body at this stage. It is to show that promotion of the community interest is its primary goal, but at no stage further through the process is there any requirement to show whether this community interest is the correct primary goal for the community at the time when a sale may take place, nor that if the group were successful in acquiring the property, the community interest is necessarily going to be delivered. A statement at this stage is therefore no more than an indication of good intent, hopefully of promise, but of no deemed delivery. The assignation of a right to such a body against such a background must surely be questionable.
4.4 The Registration Process

- Concern has been expressed under 4.3 that a 10% criterion could facilitate registration of an interest by a very small group within any community and that this could allow for significant personal dimensions. It is suggested that at least 25% of the eligible community, and of households in it, should clearly be committed to this process at the outset. What process is to be used by the Scottish Executive to define whether such a group is representative of the whole community? Will the registering parties be required to determine and name the "whole community"? Will the rest of the community know about the registration on their behalf?

- Consideration should be given to the scenario where a registration may be applied for as a reaction to events which may be happening, or about to happen, on a property—perhaps because the owner may be seeking some building development which parts of the community do not want, or where the owner may have died and part or all of the property might be coming up for sale. Reactive registration may meet criteria if appropriately presented, but may not be for the right reasons. Might a delay between registration, and the coming into effect of the right, provide protection in such instances…2 years?

- It is important that the administration responsible for processing and considering the registration of an interest is entirely at a distance from the individuals and locality involved. This is not a process which the Federation would wish to see in any way devolved to local authority level, particularly as the local authority may itself play some part in the community body.

- The Federation believes that not only the landowner and community body should have a right of appeal regarding a registration, but that this right should also extend to other members of the community involved. It may not be the wish of all the members of the community that a registration is entered by any particular group. Another dimension of this is some concern over the concept that the first interest registered by a group in a particular piece of land will take preference over any other group from within the community registering an interest. There is potential for conflict within a community within this process.

- A feature which runs throughout this paper is lack of clarity about how part of the community acquires a piece of land in which it has registered an interest. For example, on an estate of 3 tenant farmers, 12 employees and 12 other residential tenants, a group comprising all but the residential tenants constitutes a community body which registers an interest in the whole estate. Is the right granted to that community body on registration limited to exclude the residential tenancies, or are these residential tenancies caught by the registration by the farm tenants and their employees over the heads of the domestic tenants?

- A registration by a community group might preclude the individual tenants from purchasing their own properties in their own right at the point of sale of the estate. Whilst logically the community getting together and registering an interest may guarantee them the right to collectively become the owners of the whole or part property, their actions at any one time could preclude them from individually being given the opportunity to purchase some component of their property in their own right at a later stage. Trading-up is a common practice amongst domestic and agricultural tenants who wish to improve their homes or expand
their businesses. This is a significant downside of a benefit conferred by the community right.

- It is suggested that registration might be reviewed on a 5 yearly cycle using a light touch approach. It is assumed that at this stage and indeed at the stage of any exercise of the registration, the legitimacy and composition of the community body will indeed be validated to ensure continuing eligibility.

4.5 The Impact of Registration

- Once the registration is in place on all or part of a property the landowner is confronted with the prospect that should he wish to sell that property he will not be able to take it to the open market without first of all going through a process which, almost by definition, will be protracted and which could, even at the end of perhaps 12 months, not guarantee any progress. Should he or she wish to sell the land then the price will be determined artificially and set by a Government Appointed Valuer. However "good" the landowner, it is questionable whether he could see any merit in significant investment in that piece of land other than that on which he might enjoy return during his intended tenure thereof. A "blight" on investment in that land or property will therefore be imposed, to the detriment of all parties. Such investment might include fencing, roadways, houses and buildings, river or habitat improvements. The possibility of benefiting from any residue of the investment is highly questionable and this will be a clear disincentive to the landowner to consider a range of development opportunities on that land. The landowner is more likely to focus investment funds or income surplus in land which does not have registration attached, potentially in land he may own outwith Scotland. In effect, demotivating investment in a property turns a currently "good" landowner into an ambivalent or disinterested one.

- If a community registers an interest in all of a particular property, what is the position of the owner who, as part of normal estate management, may wish to take a decision to sell off perhaps a cottage, old farm steading or small piece of land for building, as a means of raising finance other development or to support his business in the immediate future…and with no immediate plans to sell the whole? Would each small parcel have to go through the process proposed? If so, then this would represent major interference in his estate management!

- The White Paper implies that "registration" is not expected to have any effect until a point of sale. This cannot be the case because the registration of a community interest in any piece of land surrounding a community could have immediate and significant implications for a planned sale to some interest within that community. Instead of a landowner being able to negotiate a reasonable sale with a community body, perhaps for the release of a football pitch or woodland planting, the basis on which he can conduct such a sale is clearly constrained by the significantly biased approach through which the sale must be now undertaken. Effectively even a willing sale to a community will be interfered with and potentially in such a way that it may not proceed in the originally intended timescale, if at all.

- There is also concern that the registration of an interest in a piece of land by a community group could provide that community group with some special status in the planning process, should the landowner wish to develop that land in the
meantime. There is a role for the community and adjoining residents to express a view on any development through the normal planning process of the local authority. The SLF is concerned that the group holding the registration on behalf of the community, should the land ever come for sale, might be deemed to have some special interest in the interim development of that land.

- **It is conceivable that landowners may attempt to protect themselves from the creation of a community, or restrict one which already exists.** Such a possibility is recognised by LRPG in *Identifying the Solutions*. There might be a counter-productive message which made landowners reluctant to create new agricultural tenancies (under new legislation?) and instead retain or take land in hand for contract farming. The SLF is aware of this already happening. There might be a reluctance to explore the potential of providing affordable rural housing.

4.6 Qualifying Sales

- The SLF has major concerns about the proposed wording of what constitutes a sale "for value". This concern is heightened by the apparent reluctance of Ministers to give **clear guidance that inter-family transfers of land are not to be the subject of triggering the community right**. It must be pointed out that in addition to straightforward inheritance of land by the heirs of a deceased owner, there is increasingly a desire of landowners to pass on their property to the next generation during their lifetime in such a way as to create stability of ownership and management. It is more than possible that such inter-vivos transfers may involve at least the partial purchase of the property by the next generation to provide some income or financial security for the retiring owner. Equally when land is inherited by a number of individuals within a family, (it being a regular occurrence for brothers and sisters to inherit a farm from their parents), then it is not unusual for one of the parties to wish to "buy-out" the interest of the others. In other situations land might be held in joint title by husband and wife and in the event of a divorce settlement there may again be some exchange of land for capital as one party buys the other's share. In such situations it would clearly be grossly unjust for a registered community interest to interfere in the passing of ownership of such property "for value". Such impacts are just as likely at a small farm level as they are on larger estates, and perhaps even harder to bear.

- Similar concerns must apply to **bona fide** transfer of shares in companies which own land. In response to concerns about land changing hands as companies change hands, it is suggested that it will be difficult to address a few problem cases without major disruption to normal practice. The SLF questions whether this is in any case within the devolved powers of the Scottish Parliament.

4.7 The Sale Process

- The proposals are silent in terms of what proportion of the eligible community has to indicate a wish to proceed with a purchase beyond the 30 day notification period. Is this to be a ballot of the whole community, or decision with the community body? The SLF suggests that this percentage should be set at the 50%, and indeed that there should be a proper ballot of all who live on and/or work on the land at this stage to ensure that the small core registering interest cannot frustrate a sale which in all probability is unlikely to proceed.
4.8 Exercising the Interest

- The White Paper suggests that a Government Appointed Valuer sets a market price for the land in which the interest has been registered. The Paper does not indicate "who" the Valuer will be…an existing District Valuer or a member of RICS, perhaps through a commercial firm or independent individual. What are to be the Terms of Reference for such a Valuer?

- It appears that it is the Scottish Executive's intention that such a process should wherever possible follow compulsory purchase procedures. Both parties can clearly appeal this process, but it is worth noting that even under compulsory purchase procedures at present, the District Valuer negotiates a price with the current landowner and only sets the price in the event of agreement not being reached. The White Paper is silent, indeed suggests the opposite, on whether this will apply in this instance. Greater detail is sought on the basis of valuation, and comparable evidence to be used in this scenario. We suggest reference to the "open market value" basis of assessment used by RICS (Scotland). It is worth considering, at least at this stage, how any proposed change in compulsory purchase procedures as currently being studied by the Scottish Executive would interact with this community right to buy.

- Once the price has been set and any appeal process completed, the community is to be balloted to see if it wishes to proceed. The White Paper asks for comments on a range of percentages of the community who wish to proceed and the result must be one of a very substantial majority of the community in favour before the right could be exercised. Again, there arises the issue of whether a part of the community could actively opt out of such a purchase and with it the part of the land in question to which that dissenting community group has an interest? For example, if interest is registered in all the tenanted farms on an estate by a group comprising 50% (i.e. >10%) of the tenant farmers, and at this point some of the other tenant farmers do not wish to go ahead - what is the position of their farms?

- The SLF considers 6 months to be too long, as the fundraising process ought to be initiated as soon as an indication of sale occurs.

- At this moment there has been no definition of the period between the end of the "30-day" closing date period or earlier and the commencement of the "6 months" to raise funds. Some guidance must be given on what is expected between these two markers, bearing in mind the time that it could take for a price to be set, appeals to be heard and ballots to be undertaken. It is totally unreasonable on a good landowner wishing to sell his property that there is an undefined delay period.

- The Federation would be very concerned about any suggestion that sellers' and purchasers' freedom to negotiate and agree the terms of missives should be restricted in any way. In particular, there should be no interference with a sellers' discretion to seek agreement that the
purchase price should be consigned on account in joint names pending settlement. Further, once missives have been concluded, sellers must remain entitled to exercise the full range of contractual and Common Law remedies in the event of a purchasers' failure to pay the full purchase price timeously or at all.

4.9 Delay in Sale and Compensation

- **There are a number of situations where the delay in a sale, as a result of the community body choosing to exercise its registration in a piece of land, will cause difficulties and loss which cannot be addressed by compensation.** Such losses may extend into the community itself.
  - The first example of this might be where a relatively small farmer wishes to sell a property so as to take up a tenancy or purchase of a larger farm. Clearly the opportunity to which he moves cannot be held in abeyance whilst a community interest in a piece of his existing property could force a 12 months delay.
  - Another example might be where an existing farmer or landowner is suffering from financial difficulties, (not unimaginable under the present economic situation in agriculture!), and where his ability to "extract" himself from these difficulties by selling up could again be prolonged. Questions in this instance need to be asked about the continuing proper management of the land if funds are not available for its management and to the well-being of existing creditors to his business.
  - A further major category under this heading might arise where the Inland Revenue are pressing for payment of Inheritance Tax, such sums falling due within 6 months of the deceased's death. It is not unusual for land to have to be sold in such instances, and there are clearly difficulties which may be caused by the existence of a community interest in a piece of the land. Interest running on outstanding IHT must be addressed as a head of compensation claim.

- The financial consequences of the notification process and purchase under the terms determined by the Government Appointed Valuer can be articulated on a case by case basis and appropriate claims made. Broad headings of compensatable loss are given, but without detail. The headings of "due to the process of notification" or "process of community purchase" are vague, but suggest reference to delay or shortfall over the market price. Do they include injurious affection, if a property is cherry-picked, or loss if a sale is delayed in a declining market? Another head of claim which is not addressed here might arise from the legitimate expectations of the current holder of pre-emption rights in a property. The existence of such a claim is already recognised and addressed in the Transfer of Crofting Estates (Scotland) Act 1997, but there will be many instances where properties have been sold with some right of pre-emption held by the vendor.

- The paper is entirely silent on the basis of calculation of such compensation claims, who is to actually agree the claim and in turn when any compensation is to be paid. Compounding a delayed sale by extension of a compensation claim (which by definition cannot begin until the sale itself has been completed) should not be allowed to extend the sale process.
• We note that compensation will be payable from Government funds directly and not from the Land Fund per se. We also note that such compensation will be appealable to the Land Tribunal for Scotland.

• Consider the situation where a community expresses an interest in all or part of a property, but cannot at the last moment raise the funds necessary for its purchase. The vendor will move to the market and seek a traditional sale, but any potential purchaser in this situation will be aware of the community's interest, albeit unsatisfied, in that land and the likelihood that it will wish to re-register an interest once any sale has been completed. **The probability of such an interest will in turn reduce the willingness of a purchaser to pay a true market price because he in turn may expect to have his options constrained**, in comparison with a piece of land where no registration was likely. A willing buyer will not buy "open" to expect to be sold in a "closed" market. This is a potential head of compensation which ought to be considered before such rights are introduced even though the community does not buy. **It is not acceptable to equate this scenario with the idea that a conventional sale may fall through...**few landowners would entertain a prospective buyer who took perhaps a year to reach conclusion of missives. As alternative it is suggested that when such a right is not properly or fully exercised, then no group should be able to register an interest in that land for perhaps 10 years after a sale goes ahead, so that the new owner can establish himself in the property without undue pressure - although clearly a community might not be happy with this if the incoming owner does not meet its expectations! A balance must however be found.

• Concern is expressed that the rules for compensation may be focussed so as to minimise Government's exposure to pay compensation through its own determination of the rules. Under existing compulsory purchase rules the landowner is already faced with considerable costs, which are unrecoverable in the event of the acquiring authority withdrawing. Whilst in any normal sale process the vendor is exposed to a withdrawal by a potential purchaser this is usually within a timescale which he himself can manage through the terms of missives and payment of deposit. **Under the proposals in the White Paper it might appear that if a community pulls out at the very last moment, then there are no legitimate heads of claim for a compensation to be founded upon. This in itself needs to be viewed against the ECHR rules.**

**4.10 After the Purchase**

• If the community group is successful in raising the funds then once title to the property has transferred to it, the group will be faced with many of the difficulties facing the previous private or public landowner. Opportunities will exist, where working capital is available, to undertake activities which the previous owner would not entertain. Caution needs to be exercised over expectations about the extent of such new opportunities. In many instances the land quality or market viability may have already been considered by the previous owner and such possibilities discounted.

• There are, of course, potential conflicts within the community that may require hard decisions to be made and these may in themselves alienate parts of the community group. For example if an option is to remove the sheep from a hill farm and plant it with community woodland, the shepherd's job may be at risk.
and he may not be willing, or capable, to become a forester. Maintaining the wider community's interest in the new initiative through such difficulties presents a real challenge to community group leaders and the Federation would support initiatives which help to develop the appropriate business and land management skills within a community group, where these do not already exist.

- The constitution whereby the community trust comes into being must define its objectives in working for community benefit and in avoiding the development of private individual benefits as a result of the group's operation. Once a group has been facilitated in the purchase of land of interest and importance to it, the White Paper is curiously and ominously silent on how the Executive proposes to manage the delivery of such benefit. The right of purchase is to be created in the hope that a community group will be better able to deliver community benefit than might a private landowner, whereas in practice such a right may be acquired at the exclusion of a landowner who may have significant capital to invest in the development of the property and the creation of jobs and opportunities for its members.

- Failure by a community group to follow through delivery of community benefit or development is a breach of the basis on which it acquired the property. Does the Executive have any plans, equivalent to the proposed compulsory purchase mechanism against landowners who evade this legislation, to deal with communities which fail to deliver?

- Against the background of the right being granted for communities to buy land because land is the constraining factor, then some caution needs to be exercised about the community's ability to sell off any or all of the property so acquired. Questions need to be asked about how much of a property could be sold off before the objectives of "removing constraints" on the community were delivered. Clearly the subsequent sale of the entire property and the generation of capital for other activity within the community is a clear breach of the right to acquire land because land, as distinct from capital, is not the constraining factor. At the other end of the scale the release of some small portion of the land, for example for building, might generate capital which could be re-invested in the remainder of the newly acquired land holding. A clear line needs to be established between appropriate sale and development of a property and overt asset stripping. There is also concern about potential individual benefit of those who might acquire part of the land from the community, particularly if they themselves are members of the community group? Would this infringe the individual benefits rules, and how would this be monitored?

- If the community trust as a whole cannot make a long term economic proposition of owning and managing the land it has acquired under the right, a question needs to be asked about to whom the ownership of this land would then be transferred. It is understood that the Executive's intention is such land might be transferred to "a trust of like purpose", though it is not necessarily guaranteed that one might arise from the community remaining at that time. Could land acquired by a community group ever return to private ownership, and who would be the beneficiary of any sale proceeds? The SLF suggests that where a community trust wishes to give up and where no other local community body wishes to take on the management of the land, then a sale on the open
market should be permitted with proceeds being returned to the Land Fund, irrespective of the original purchase basis, and such funds be made available to communities elsewhere who might wish to purchase land. Such an approach might recycle funds within community ownership and constrain the draw on public funds from elsewhere.

4.11 Hierarchy of Interests in Land

- The White Paper is entirely silent on the place of a community right to buy in a hierarchy of other interests in land. The first issue must be **whether it takes precedence over an existing right of pre-emption in a property** and in some circumstances over an existing development option. Equally, it is silent on the question of compulsory purchase acquisitions or voluntary sales to, for example, utility companies and/or local authorities.

- The White Paper is also silent on the issue of securities held against the title of a piece of land by banks and other lending institutions. The process of the community right to buy clearly has major implications for the ability of a security holder to realise that security and in terms of compensation to address the consequences of the delay should a sale not be realised when required. Returning to the impact of registration, **it may therefore be essential for a lending body to require notice of any community registration of interest in the property**. Long before a landowner may even contemplate a sale, a lending institution may constrain the current owner's ability to secure lending against that property and potentially therefore constrain his ability to manage that land either in its own or the local community's best interest.

4.12 Alternative Approaches

- The SLF emphasises once again that it has no inherent difficulty with community groups owning and managing land, and would welcome this extension of the range of types of body currently owning and managing land in Scotland. It questions whether communities need to feel that they should own the land for this to be necessary and as stated above, questions the need to give the community the **right** rather than the **opportunity** to acquire land if it so wishes. In particular we are concerned about the impact of registration and delayed sale and suggest that these difficulties are sufficient to oblige Government to consider other means of achieving some of the policy goals of these proposals.

- As stated above, the SLF has major concerns about the impact of any broadening of the definition of "those who live and or work on the land in question". There may be instances, however, under constrained qualification where a broadening of this definition to include people in the wider locality may be relevant if it applies to small parcels of land where there are currently no resident communities. An example of this would be a piece of woodland adjoining or close by a settlement where there is a clear interest in that woodland which cannot be satisfied through co-operation with the existing owner. It is not implied that such a right should be extended in instances of commercial forestry plantations, but restricted to areas of mixed and amenity woodland and where such woodland does not have a fundamental role in any sporting management of the property. There may be other such instances, including the village hall or football site on the edge of a village which could be addressed in this way
without broadening the basic definition of those who would constitute the community in areas of managed and working countryside and where the interests of this "first community" could itself be swamped by the demands of a wider community.

• The Federation is also aware of other proposals within the land reform process which would involve the development of a Code of Practice for landowners and the belief that such a Code should involve landowners in seeking greater dialogue and communication with members of their local community. The SLF supports this approach in its own Code of Practice for Responsible Land Management and expresses concern that a constructive dialogue under such headings can only be frustrated if a community which is "not getting its way" could fall back and use a register of community interest as a one-sided negotiating tool. **Meaningful and practical methods of involving communities in land management decisions, recognising a balance of rights and responsibilities therein, could prove a more widely appropriate tool for delivering community benefit and sustainable development.**

• If the proposals as outlined were to go ahead then a landowner might choose to present the land in which a community interest in registered for sale before he proceeds with marketing of the remainder of the property. This is potentially advantageous where there is no inherent marriage value between the area in which the community registers an interest and the value and operation of the remainder. In other instances an owner may choose to go down this route for his whole property before having sales details printed etc.

• A landowner could choose to bring forward portions in which a community has an interest even if he does not wish to sell the remainder, and proposals facilitating such a move by a landowner would be to the benefit of the community if it brought forward its opportunity to acquire that land. One way of doing this might be to allow a landowner, following registration of interest in a piece of land, to offer that land to the community with immediate effect and for the two parties to agree, following advice, on a mutually acceptable value. The community could have up to, for example, 6 or 9 months to find the necessary funds if it wishes to go ahead with the purchase. If it is successful, the sale goes ahead and both parties are relatively content. In the event however, of the community failing to find the funds within this "window of immediate opportunity", then we consider that its ability to re-register an interest in that land should be waived for a period of 20 years. We believe this is a reasonable trade off for the landowner's willingness to bring the land immediately to the market and the waiver on future registration would give the landowner the benefit of a period of time during which he could realistically expect to be able to invest and manage his land with proper prospect of return on it.

• Another way of encouraging landowners to bring land forward would be through some address of the fiscal system and how receipts of such a sale were to be treated. The SLF appreciates that the Scottish Executive does not have jurisdiction over fiscal matters, but wonders whether it would be prepared to discuss with HM Treasury the possibility of some differential treatment of proceeds of sales to properly registered community bodies. One aspect may be to consider capital gains tax relief of some extent on such a sale by a landowner, as distinct from someone operating a trade, (as currently applied to
proceeds of compulsory purchase) or possibly guidance on valuation of such land for IHT purposes. There are precedents for this by virtue of sales of works of art to the Nation and on the valuation of property including Sites of Special Scientific Interest. A gift to a "Registered" Community Group on death of the owner might be regarded as a non-event for CGT and IHT. We would urge the Scottish Executive to give these aspects some detailed consideration because they would have the advantage of being "inclusive" of the landowner and bringing forward a voluntary sale to a community body, ahead of when it might otherwise gain the opportunity to do so. It could also foster further co-operative activity between the landowner and the community.

- In practice these steps could be combined in a process which was implemented before a community right to buy applied.
  - The properly constituted community body registers an interest in the land, as per the White Paper.
  - The landowner and the community discuss the extent of the registered land.
  - The landowner immediately offers the land for sale, at a mutually agreed value - knowing that there would be fiscal "value", but no compensation. An "inclusive" process.
  - Period agreed for the sale to go through - the sale goes ahead, ownership changes.
  - If the community group decides against the purchase, or fails to raise the funds, the matter closes. No new registration in that land for 20 years.
  - If the landowner does not wish to offer land for sale, registration has immediate effect and would catch any future sale as per the White Paper.

- Consideration of extending the Fiscal measures referred to above to all land sales to community bodies, even where registration has not taken place, should also be considered.
5. Seawell Estate...a Case Study on the proposed Community-right-to buy.

Key.

A  A let farm...tenant farmer + family...farm staff in cottages.
B  In-hand farm...contract farming arrangement with A. All 3 houses let on Short Assured Tenancies.
C  As A, but with 2 cottages let as holiday homes.
D  As C
E  Home Farm...owner+family. Cottages used by estate workers and staff.
F  Woodland adjoining river. Amenity value primarily.
1  Houses once belonging to estate but sold off time ago.
2&3  Adjoining settlements.
Introduction

Seawell Estate is a hypothetical, but not atypical Scottish property, designed to provide a setting for a number of scenarios under the proposals to introduce a "community right to buy".

Assumptions

Under the proposals outlined in the White Paper

- Each farm has a defined community, and the Estate a community representing the sum of the parts.
- There is, viewed from another dimension, a "community" of agricultural tenants (and their families?), a "community" of domestic SAT tenants, and a community of estate and farm employees - on the estate as a whole.
- The individuals who live at 1, which houses formerly were part of the estate, no longer "live on and or work on the land in question".
- No one lives in/works on the woodland at F, although one of the estate workers who lives at the Home Farm E is employed as a gamekeeper and works across the whole estate.

Some Issues

1. As far as a registration of interest in the whole estate is concerned, the "community" is clear cut under the White Paper proposals, at least in total. What sub-set of the total community would provide a representative sample? Could domestic tenants and employees register an interest in all the estate without involvement by the tenant farmers? Could the tenant farmers appeal against the registration?

2. In terms of a registration of interest in part of the estate, for example farm A, is the appropriate community belonging to farm A only, or does it include those who live on and or work on the whole estate? What if the estate has an outlying farm with its own community - how does this scenario apply?

3. Could the collective community of A, B, C and D (being representative of all components of the community) register an interest in their farms and in E, without involvement of (or knowledge of) the community of E?

4. As above, but in another dimension, could so many domestic tenants and employees register an interest in all the houses on the estate, to the exclusion of other tenants/occupiers?

At a later stage in the process,

5. In 1, 2, 3 and 4 above, if the ballot goes ahead and secures the necessary majority, but nevertheless without the support of eg the tenant farmers in 1 or of the residents of E in 3, what is their position? Are their houses bought over their heads? In one sense this may be no different to an incoming landlord, but there would be considerable grounds for conflict within the community.

6. In the event of any moves to broaden the definition of community for the purposes of eligibility:

- Does the interest of residents in settlements 2 and 3 extend beyond the adjoining farms ie C and A/B, or across the estate in total? If this is to be case or site specific, how can legislation be drawn to address the range of scenarios this opens up?
RURAL AFFAIRS COMMITTEE

RA00/8/3(a)

Scottish Statutory Instrument 2000/52

The Dairy Produce Quotas Amendment (Scotland) Regulations 2000
(SSI 2000/52)

General Procedure note
1. The Rural Affairs Committee is the lead committee on this instrument, which was laid on 10 March 2000. Copies have also been passed to the European Committee for information.

2. This order comes into force on 1 April 2000 and was laid under a "negative procedure" which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. In the case of this instrument therefore, the time limit for Parliamentary action expires on 27 April.


4. The Subordinate Legislation Committee considered this instrument on 21 March and determined that it has no technical matters of substance to draw to the attention of the Parliament.

5. A SERAD Executive Note is attached.

6. Should a motion for annulment be proposed under Rule 10.4, the Committee would have to invite Ministers to debate the issue and then report to the Parliament with its recommendation. Where no annulment is sought, the Committee is still obliged to report to the Parliament with its recommendation, taking into account any recommendations made by any other Committee.

Actions required on 28 March 2000
7. Members are requested to consider whether, at this juncture, the Committee wishes to make any recommendation in its report to Parliament.
Richard Walsh
Rural Affairs Committee
Senior Assistant Clerk
March 2000
EXECUTIVE NOTE

The Dairy Produce Quotas Amendment (Scotland) Regulations 2000

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to introduce amendments to the way in which the milk quota system is administered throughout the UK by the Intervention Board (IB) and by so doing to introduce greater flexibility into the milk quota system.

Consultation

A considerable number of parties with an interest in milk quotas and the amendments in question have been consulted during the preparation of the instrument. Those include:

- National Farmers’ Union of Scotland
- Scottish Dairy Association
- Scottish Milk
- Claymore Dairies Limited
- Crofters Commission
- Highlands and Islands Enterprise
- Shetlands Islands Council
- Scottish Landowners Federation

Effects on Island Communities

The Regulations contain an amendment to remove the milk quota ring fencing arrangement in Shetland. In effect this means that Shetland milk producers will now be able to sell/lease their milk quota to producers on the mainland. Under the ring fencing arrangement they could only sell/lease their quota to other producers on Shetland. This amendment was made at the request of the dairy farmers on Shetland and will give them the flexibility to safeguard their farming businesses.

Financial Effect
The revised Regulations will not result in any positive or negative cost burden on the dairy industry. The changes in the Regulations will provide milk producers with greater flexibility in quota management and will not affect their business costs. There is therefore no need to complete a Regulatory Impact Assessment.

RURAL AFFAIRS DEPARTMENT
9 March 2000
General Procedure note

8. The Rural Affairs Committee is the lead committee on this instrument, which was laid on 10 March 2000. Copies have also been passed to the European Committee for information.

9. This order comes into force on 31 March 2000 and was laid under a "negative procedure" which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. In the case of this instrument therefore, the time limit for Parliamentary action expires on 27 April.

10. The order enforces European Community conservation measures and is made by Scottish Ministers in exercise of the powers conferred under section 30(2) of the Fisheries Act 1981.

11. The Subordinate Legislation Committee considered this instrument on 21 March and determined that it has no technical matters of substance to draw to the attention of the Parliament. Members may wish to note the accompanying Regulatory Impact Assessment.

12. An Executive Note, copy of the Regulatory Impact Assessment and a Q&A Brief, all from SERAD are attached.

13. Should a motion for annulment be proposed under Rule 10.4, the Committee would have to invite Ministers to debate the issue and then report to the Parliament with its recommendation. Where no annulment is sought, the Committee is still obliged to report to the Parliament with its recommendation, taking into account any recommendations made by any other Committee.

Actions required on 28 March 2000
14. Members are requested to consider whether, at this juncture, the Committee wishes to make any recommendation in its report to Parliament.

Richard Walsh
Rural Affairs Committee
Senior Assistant Clerk
March 2000
Annex A

EXECUTIVE NOTE


1. The above instrument was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 (as amended). The instrument is subject to negative resolution procedure.

Policy Objectives

2. The new EC Regulation represents a revised package of EC wide technical conservation measures for fisheries. Two fundamental principles underpin the new Regulation, which are fully supported by the UK: reducing discards and simplifying the rules.

3. This Order provides for the enforcement, in Scotland (relating to the Scottish zone of British fishery limits and all Scottish fishing boats, wherever they may be), of the EC Conservation Regulation (EC) No. 984/97 in consequence of it having been amended by Council Regulation (EC) No. 850/98 as amended.

4. This Order revokes the Sea Fishing (Enforcement of Community Conservation Measures) Order 1997 (S.I. 1997/1949) and the Sea Fishing (Enforcement of Community Conservation Measures) (Amendment) Order 1997 (S.I. 1997/2841) (article 13). Similar Orders are being made by Ministers of the Crown to provide for enforcement in England and Northern Ireland; and by Ministers of the National Assembly for Wales for enforcement in Welsh territorial waters.

5. The Order re-enacts provisions for the enforcement of Article 11 of Council Regulation (EC) No. 894/97 (O.J. No. L132, 23.5.97, p.1) laying down certain technical measures for the conservation of fishery resources (“Regulation 894/97”) and makes provisions for the enforcement of certain of the enforceable Community restrictions and obligations concerning the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms which are contained in Council Regulations (EC) No. 850/98 (O.J. No. :125, 27.4.98, p.1), as amended (“the Council Regulation”).

6. The Executive fully shares the Commission’s concerns about the parlous state of many of the fish stocks and supports attempts to improve technical conservation measures as one way to help conserve and improve stocks. This is consistent with supporting sustainable fisheries.
7. The proposal for improved technical measures is based on two fundamental ideas. The first involves measures to reduce the catch of juvenile fish by improving the selectivity of towed gear and by limiting fishing in certain areas where and when juvenile fish are abundant. The second would simplify the rules so that they are more easily understood, both by fishermen and managers, and as a consequence, more easily enforced.

8. Detailed guidance describing the main changes to the EC conservation rules as a result of the new regulation has been issued to fishermen. This contains a straightforward explanation of the new methods employed to protect juvenile fish and vulnerable stocks. This guidance can be made available to members of the Committee for background information, if members would like to know more of the fine detail of the regulation.

Consultation

9. The proposed changes to the EC conservation rules were originally notified to the industry representative organisations in 1996. Since then, the industry have been consulted, in particular through the vehicle of the Fisheries Conservation Group (a consultative group made up of officials, scientists and representatives of the main UK fishermen’s groups) on the evolution of the proposed regulation.

10. Fishermen’s concerns have helped shape the regulation, in particular through the introduction of a 2 year lead in time to allow for changes to gear to be made in the course of normal replacement for wear and tear. This 2 year period dates from November 1997, when Fisheries Departments wrote to fishermen detailing the changes that would come about as a result of this new regulation.

11. The industry have agreed that they can accept the costs of the new regulations, particularly given their benefits in improving the health of fish stocks. Most of the new measures, such as the introduction of square mesh panels and minimum sizes for shellfish were already in place in the UK, so the new rules are generally welcomed as providing a level playing field in shared fisheries. Fishermen have recently approved more stringent measures in the North Sea to protect juvenile haddock, illustrating that they see the benefits of conservation.

Financial Effects

12. A regulatory impact assessment of the effects of implementing the Community Conservation Regulation has been done. Due to the 2 year lead in time, and the likelihood of improved catches over the medium term as a result of the conservation measures, the financial impact of the regulation is considered to be neutral.
REGULATORY IMPACT ASSESSMENT: SCOTLAND

Title


Purpose and intended effect of the measures

1. The Community fisheries technical conservation legislation now in force dates from 1986. This had been amended many times, and was re-issued in a consolidated form on 29 April 1997 as Council Regulation (EC) No. 894/97. In December 1995, the Council of Ministers invited the Commission to revisit this conservation legislation and to bring forward proposals to revise it. A draft proposal emerged 1996 and was intended to reduce catches of juvenile fish and fish discards so as to help conserve fish stocks. After significant negotiation, this proposal was finally published as Council Regulation (EC) No. 850/98 on 30 March 1998.

Issue

2. The Commission's initial proposal was radical and far reaching. It sought to replace virtually all the current rules. It would thus help to rebuild fish stocks to the long term benefit of the fishing industry. However, to attain this sound objective the price would have been that the fish trawling sector would have needed to replace virtually all nets at substantial cost.

Options
3. The options were identified as:

- accepting the initial proposals - which was not acceptable; or
- negotiating on the proposal so that the benefits of reduction in the catch of juvenile fish and fish discards could be secured in a manner which was affordable for the fishing industry.

4. A key point for the UK fishing industry was to gain a two-year lead in time because within that time period most gear affected by the compromise text will have worn out in the normal course of business and have been replaced. The life of a cod-end (the part of the net where most selectivity takes place) is dependent on the type of ground it is towed over. On rocky ground it might need to be replaced every three or six months whilst on sandy ground it might last as long as eighteen months. But, in the normal course of events, it should have been replaced as a normal business cost within the two year lead time.

5. The table below illustrates initially proposed measures which would generate costs and the measures as agreed in the final text.

<table>
<thead>
<tr>
<th>INITIAL PROPOSAL</th>
<th>FINAL TEXT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increased mesh size of 110 mm for cod, haddock etc</td>
<td>100mm for cod.</td>
</tr>
<tr>
<td>Square mesh panels required in all nets</td>
<td>Square mesh panels only mandatory in 70-79 mm nephrops nets</td>
</tr>
<tr>
<td>Maximum diameter of twine specified for all sections of net</td>
<td>Maximum diameter of twine now only specified for cod end and immediate attachments</td>
</tr>
<tr>
<td>Number of meshes in net circumference specified for all nets of more than 70 mm diamond mesh</td>
<td>Specification now restricted to nets between 90 mm and 119 mm diamond mesh. This is essentially the status quo</td>
</tr>
<tr>
<td>No lead in time for change stated</td>
<td>Two year lead in time secured</td>
</tr>
</tbody>
</table>

**Compliance costs for business**
6. The business sector most directly affected would be the towed-gear catching industry (trawlers). There would also be direct effects in businesses who manufacture cordage, rope, twine and netting.

7. Most elements in the UK fleet are capable of shifting quickly from one fishing activity to another. In addition, not all of them earn their livings from trawling which is the fishing gear affected by the regulation. At any period, it is estimated that between 1/3 and 1/2 of the total fleet is engaged in fishing for crabs, lobsters and other shell fish or in using nets other than trawl nets. These latter activities are not directly affected by the need to make changes to their fishing gear.

Benefits

8. It is also relevant that the reduced catches of juvenile fish should lead to a medium term increase in the availability of marketable fish as the legislation contributes to the rebuilding of stocks. These changes should therefore lead to healthier fish stocks and consequently better catches for fishermen. This view is accepted by the industry.

Illustrative cost of changes for a business (fishing vessel) required by the regulation:

Square mesh panels

9. UK national legislation already requires nephrops nets between 70 - 79 mm diamond mesh to incorporate square mesh panels. However, the new rules would require slightly modified panels. A panel costs about £100 for supply and fitting.

Cod ends

10. Where it is necessary to change cod-ends either because twine diameters do not comply with the Regulation or because an increased mesh size is required then the cost would fall somewhere between £200 for a nephrops net up to £500 for the largest scale white fish net. Vessels could be expected to carry a couple of spare cod-ends in addition to the one in use.

11. Maximum cost for a nephrops vessel would therefore be of the order of £100 for a square mesh panel and £600 for cod-ends. The larger white fish vessel, which is not required to incorporate a square mesh panel, might be faced with costs of £1,500 for three cod-ends.
As already stated, the lead-in time secured at the request of the UK industry should ensure that these costs are not significantly greater than the business would have had to bear in any event.

**Other costs**

12. Net manufacturers would also be subject to costs. These are less certain and arise principally because of the cost of raw materials that can no longer be utilised. This means, in practice, fishing net twines in excess of 8 mm in diameter. Twine of this thickness is rarely used in the generality of nets and stocks are not likely to be great. In any event, manufacturers have had the opportunity to run down stocks in the time since the proposal was published in 1997.

13. Enforcement of this Regulation takes place in the Scottish zone of British fishery limits by the Scottish Fisheries Protection Agency (SFPA). The cost of enforcing this new regulation is not expected to differ from the cost of enforcing the previous legislation which was replaced.

**Results of consultation**

14. Since the proposals were first aired in 1996, there have been many consultations with the industry generally and in with the Fisheries Conservation Group (a consultative working group which includes the leaders of the main UK industry organisations). The industry attached great importance to securing a two year lead time. Most of their other cost related points have also been met in the Regulation as finalised. The industry can accept the costs are part of their normal business expenses. Indeed, the industry have subsequently agreed to stricter requirements for the North Sea to protect juvenile haddock. The 2 year lead in time dates from November 1997, when Fisheries Departments wrote to the industry, setting out details of the new measures that may have a cost to the industry, as a result of the new regulation.

**Summary and recommendations**

15. The costs of the "accept the initial proposal" option would have been significant implying, as it did, the need to replace whole nets in a short time. The industry quote an average cost for a complete net as in the region of £7,000. The Regulation as agreed implies costs of perhaps £700 for a nephrops vessel and perhaps £1,500 for a large white fish vessel. This much reduced cost would in most cases be incurred in the normal cause of business as cod-ends need to be replaced.

16. Due to the 2 year lead in time, and the likelihood of improved catches over the medium term as a result of the conservation measures, the financial impact of the regulation is considered to be neutral.
Enforcement, sanctions, monitoring and review

17. Enforcement in the Scottish zone is carried out by the SFPA. Penalties for non-compliance are set out in a Statutory Instrument which, as is the case with present legislation, sets penalties proportionate to the offence. The SFPA keep the working of the Regulation under constant review and, in addition, the Regulation contains an Article requiring the Council of Ministers to return to the issue three years after the date of application of the regulation in the case of the main conditions.

DECLARATION:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the
Responsible Minister: 
Date: 

Date of Regulatory Impact Assessment: March 2000.

SERAD: Sea Fisheries Division
March 2000.