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

1. **Items in Private**: The Committee will decide whether to take items 6 and 7 in private.

2. **Land Reform (Scotland) Bill**: The Committee will take evidence at stage 1 from the following witnesses—
   - Simon Fraser
   - Maggie Fyffe, Isle of Eigg Heritage Trust
   - David Gass, Scottish Enterprise
   - Andrew Hamilton, Royal Institution of Chartered Surveyors
   - Dr Maurice Hankey and Robert Balfour, Scottish Landowners Federation
   - Jim Hunter, Highlands and Islands Enterprise Community Land Unit

3. **Subordinate Legislation**: The Committee will consider the following instrument under the negative procedure—
   - The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2001 (SSI 2001/449)
     - The Committee will take evidence from the Minister for the Environment and Rural Development, Ross Finnie MSP.

4. **Subordinate Legislation**: The Committee will consider the following instruments under the negative procedure—
   - The Sheep and Goats Spongiform Encephalopathy (Compensation) Amendment (Scotland) Order 2001 (SSI 2001/458)
   - The Rural Diversification Programme (Scotland) Amendment Regulations 2001 (SSI 2001/484).
5. **Integrated Rural Development:** The Committee will consider suggestions by Members for visits.

6. **Budget 2003-04:** The Committee will consider the remit for an adviser on the Budget process.

7. **Witness Expenses:** The Committee will consider a claim for witness expenses.

Richard Davies  
Clerk to the Committee
The following papers are attached or are relevant to this meeting:

**Agenda item 2: Land Reform (Scotland) Bill**

Written submissions on the crofting community right to buy (Part 3 of the Bill) received from the following, from whom oral evidence will be taken at this meeting, are attached—

- Royal Institution of Chartered Surveyors
- Scottish Landowners Federation
- Highlands and Islands Enterprise Community Land Unit
- Scottish Enterprise
- Isle of Eigg Heritage Trust
- Simon Fraser

Scottish Parliament Information Centre (SPICe) Research Paper 01/24 – The Land Reform (Scotland) Bill: The Community Right to Buy and the Crofting Right to Buy – was circulated to members in Members’ Circular Number 52 on 21 December 2001.

Members are reminded to bring with them a copy of the Land Reform (Scotland) Bill (SP Bill 44) and Policy Memorandum and Explanatory Notes.

**Agenda item 3: Subordinate Legislation**

The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2001 (SSI 2001/449) is attached.

Members should bring with them a copy of the letter from the Minister sent out in circular 51.

**Agenda item 4: Subordinate Legislation**

The Sheep and Goats Spongiform Encephalopathy (Compensation) Amendment (Scotland) Order 2001 (SSI 2001/458) is attached.

The Rural Diversification Programme (Scotland) Amendment Regulations 2001 (SSI 2001/484) is attached.

**Agenda item 5: Integrated Rural Development**

A paper from the clerk will follow.

**Agenda item 6: Budget 2003-04**
A paper from the clerk is attached.

**Agenda item 7: Witness Expenses**

A paper from the clerk is attached for Members only.
SUBMISSION FROM SIMON FRASER

I am a solicitor in private practice based in Stornoway in the Western Isles and a partner in the firm of Anderson MacArthur of Stornoway and Portree.

I am accompanied by John Hutchison Lochaber Area Manager of The Highland Council who in that capacity has provided considerable practical support to a number of community ownership initiatives in his Area.

I have over the past ten years acted for a number of communities seeking to achieve ownership of the land in which they live.

Throughout that time I have attempted in so far as is possible not to become a protagonist – rather I have tried to retain the detachment of the professional practitioner. This is not an easy balancing act and I have from time to time been drawn into the debate.

The evidence which I can give relates to my observations over the last ten years of what is with a few exceptions the newest but also the fastest growing sector in land ownership in Scotland.

Taking the structure from the three ‘legs of the stool’ of rural development I offer the following comments:-

1. Community ownership has allowed development to take place within the environmental field, for example:

   - Following the removal of uncertainty, communities have been able to have more confidence and control over their own local natural environment, archaeology, etc.
   - Following from this have emerged clear policies for different aspects of land use: loch and river management; grazings management, etc.;
   - Communities are actively developing land management plans;
   - Knoydart and Assynt now let shootings and achieve the annual targets within the deer cull;
   - There is now an atmosphere which encourages the establishment of external companies working in the environmental field, such as the Knoydart Forest Trust which is carrying out operations on adjacent private estates as well as community owned land;
   - The Assynt Crofters Trust has also planted trees and erected fencing to protect amenity woodland.
   - At Treslaig, crofters have been paid for stock management and upgrading of areas to be permanently grazed;
   - Paths have been improved in Assynt and the planning of strategic footpaths is in hand with the local group operating in North West Sutherland.

Although it is difficult to evaluate certain of these environmental advantages, the Knoydart Forest Trust has created 1.5 FTE jobs. The Isle of Eigg Heritage Trust has carried out planting and fencing, resulting in six contract jobs.

On Loch Shiel, bringing the jetties into community ownership has removed fears over access rights to the Loch and underpinned a cruising business.

2. Improvements within the social field have resulted in:

   - An increase in community confidence;
   - Increasing optimism and a greater involvement in social gatherings and community meetings of all types;
   - Increase in population on Eigg;
• Certain additional projects such as community outreach centres and encouraging additional training opportunities within townships;
• A greater number of people prepared to give voluntary effort for the well-being of their own neighbourhood, manifesting in more cultural events as well as running community enterprises;
• Community folk now feel better able to meet with agencies on equal terms;
• Some confidence in developing housing renovation plans for the community, together with approaches to the Local Authority and Housing Association for financial support;
• In Eigg six houses are in a renovation programme which is now 50% complete.
• In Assyt a four-house development will be starting construction in April 2002;
• In Knoydart a temporary housing project has been completed which ensures accommodation for incoming and single workers;
• The open processes of developing policies for land use, housing allocation, property letting, etc. has developed community confidence
• Prior to community ownership, tenants in Knoydart and Eigg had no leases and therefore no formal security in their homes. The granting of leases for domestic properties has meant an increased willingness to carry out decoration, repairs, as well as derive grants.

3. The more obvious short-term benefits are within the economic field. These comprise:

• Establishment of three farm partnerships on Eigg;
• An energy options appraisal on Eigg;
• Refurbishment of small hydro electric schemes on Eigg;
• Major refurbishment of the community owned hydro electric scheme in Knoydart, with assistance from HIE and EU;
• A wind survey has been done in Assyt;
• The Assyt hydro scheme is now complete and selling to the national grid;
• In Assyt, the numbers of brown trout have been increased, loch and burns restocked with sea trout and is now being advertised as a game fishing opportunity;
• These fishing developments have resulted in increased business for accommodation of all grades, both within the estate and nearby;
• The principles of agri-tourism are being encouraged in Assyt, an area where there was virtually no activity previously;
• The opportunity to divest expensive liabilities from the estate, eg. Inverie House, which is now a family home, sculptor’s studio and design workshop.

On Eigg, since the buyout, around 20 jobs (full time, part time and contract opportunities) have been created than, 3 subsidiary companies established, 5 private businesses strengthened and a new pier visitor centre and tearoom built.

In addition to those specifics, community ownership has allowed dedicated personnel to be employed in Eigg and Knoydart in particular who can work at identifying, evaluating and taking forward revenue earning projects within the community.

The Treslaig and Achaphubuil Crofters Woodlands Trust has erected fences and deer grids, carried out bracken clearance and created paths to encourage organised walks, all of which improve local employment. This increased activity has helped sustain the local passenger ferry.

We are concerned over the proposal to exempt commercial operators from the general right of access which, if enacted could have serious implications for mountain guides, outdoor centres, etc. Schools, Duke of Edinburgh award participants, and outdoor clubs extensively use places like Eigg and Knoydart. The restrictions on access that had to be imposed at the time of the Foot and Mouth Disease outbreak illustrated the implications for these fragile economies.
In Knoydart and Eigg a number of additional companies have been established, some independent such as shops, craft associations and the Knoydart Forest Trust. Other companies are related to the main charitable parent and allow specific operations to be carried out, such as trading, generation and sale of electricity, stocking, accommodation lets etc.

These community companies are now on the brink of investigating joint ventures with private individuals and, apart from the farming partnerships, this resource is so far untapped.

Forward business planning has also been taking place on a “whole estate” basis. Business planning is taken forward in a very structured way involving community workshops on specific topics, feeding into a well founded business plan. This wide involvement ensures that there is broad community support for any proposals that evolve and are worked up through the process.

The overall aim of these community enterprises is to create an income to be reinvested in the respective estates, not simply to ensure the continued existence of the companies themselves.

A great deal of support in kind has been provided by the Highland Council, which has a key strategic goal “to support and help bring about a change in the pattern of Highland and seabed ownership towards a more local, egalitarian pattern of ownership”.

4. As general observations I would offer the following:-

a) community ownership and management of their land is invariably conducted in the best interests of the whole community and not just a small part or single economic entity within that community.

b) community management decisions are made in the light of long term considerations.

c) community responsibility is invariably exercised in a responsible fashion.
SUBMISSION FROM THE ISLE OF EIGG HERITAGE TRUST

The Isle of Eigg Heritage Trust welcomes the substantial improvements that have been made to the proposals concerning access in the Land Reform bill.

IHET particularly welcomes the dropping of the landowner power of suspension of the right, police powers and local authority emergency powers. The Executive has clearly heard the concern of the public as expressed in the unprecedented response to the draft Bill.

However, substantial problems remain. One fundamental issue is that the Bill is still too complicated, struggling to define how access should be taken through different types of land, according to which crop is being grown. All this detail needs to be removed and placed within the proposed Scottish Outdoor Access Code. There is in general a need to simplify the Bill as it passes through the Parliament to produce legislation that defines the access right in simple terms. The Bill must not undermine the existing access but enhance opportunities.

IEHT recommends the changes put forward by the Ramblers’ Association, as long as restrictions can be enforced in ecologically fragile areas (such as breeding birds sites, or sites which where excessive damage to rare plants has occurred through erosion), restrictions which are already covered by law.

IEHT recommends the following changes in particular:

Local authority power to exempt land (S11)
Foot and Mouth demonstrated that local authorities were far too willing to bend to local landmanaging pressures to close off land. If section 11 remains in the Bill we will finish up with local authorities under continuous pressure to close areas of land. Perhaps the only power under this section that should be given to local authorities is the power to enter land and erect (and remove) ADVISORY notices about the exercise of public access rights - similar to the power given to SNH under section 26. Local authorities will be given extensive new powers under section 12 to make byelaws over any land and water. This is a major extension of their existing powers and should be sufficient, along with the power to erect advisory notices.

Powers of ministerial discretion (S4, S8)
There are too many powers of ministerial discretion now in the Bill (eg sections 4 and 8). These did appear in section 6 of the Draft Bill, but were subject to Parliamentary approval. No such approval is required in the latest draft. These ministerial powers should be removed - if they remain ministers will be forever under landmanager pressure to use them. If new problems arise the principle should be to resolve them first of all through modifications of the Code. If this is not good enough then legislation specific to the problem should be put before the Parliament, or amendments made to existing legislation dealing with health and safety, quarries, conservation, animal health etc etc.
Legal position on land excluded from the right
There is a need to clarify the legal position, and perception, of access on land that is excluded or exempted from the right.

The Outdoor Access Code [10]
The content of the Code will be crucial. The Code should be guidance on, rather than rules of, responsible conduct.

Exclusion of land on which crops are growing [6(j)]
This should be amended so that such land is not excluded. The Outdoor Access Code should define when the right should not be exercised in relation to crops. If the Bill as it stands is enacted there is a risk that political pressure in the future would extend the exclusion to other land. Access on field margins is problematic as land is often cultivated right up to field boundaries. There is a problem with defining a crop which would be better dealt with in the Code than on the face of the Bill. The code can be adapted to reflect changes in agricultural practice and support mechanisms.

Exclusion of farmyards [6(b)(i)]
Many routes, which are not necessarily Rights of Way, are through farm steadings and would be excluded from the right. There is a need for an amendment to ensure that there is a right of passage in such circumstances unless a practical alternative route has been provided.

Exclusion of business activity [9(2)(a)]
This should be amended so that business activity falls within the right. The Code should include guidance indicating that the more organised an activity and/or the greater impact it might have then the more consultation with land managers would be expected. As the Bill stands landowners will have increased confidence in challenging groups to pay for access. There is a problem with defining a business activity - for example would it apply to photographers or guide book writers? This would have a disastrous impact on tourism.

Exclusion of land held by the Queen [6(e)]
This should be removed. The security argument is questionable. The public currently exercise access on eg Balmoral and a right of recreational access is unlikely to have much influence on criminal activity.

Golf courses [9(e)]
Being on a golf course for recreational purposes would be excluded. This should be amended so that golf courses have the same status as other land developed for recreational purposes - otherwise this would put an end to sledging for many children! The Code should define responsible behaviour in relation to golf courses.

Land set out for a particular recreational purpose is excluded [6(f)]
This would be open to abuse. Presumably this would extend to grouse moors, deer forest and fishing beats. The Code should deal with responsible behaviour in relation to these activities. If this remains land managers would be able to argue that the right did not apply for large parts of the year.
Local access forums [24]
This should be amended so that in National Parks the National Park board, rather than the local authority, should set up the access forum(s).

Estate Policies [6(b)(ii)]
It appears that estate policies would potentially be excluded from the right. If so, it needs to be amended.

School grounds [6(b)(iii)]
There is a concern that in some circumstances this wording could include extensive areas of land not particularly close to the school. There is a need to clarify the land that this will apply to.

The Isle of Eigg Heritage Trust welcomes the substantial improvements that have been made to the proposals concerning the Community Right to Buy and the Crofting Community Right to Buy in the Land Reform Bill. The Isle of Eigg Heritage Trust welcomes in particular the changes relating to lotting, broadening the right of appeal (section 57), additional anti-avoidance measures (sections 34.7.a, b,c and 37), the new community right to buy where the landowner sells land in breach of Part 2 (sections 46 and 54), the procedure for late registration (section 36) and no restrictions on subsequent disposals (section 73) as well as the possibility for Crofting Community Bodies to acquire Salmon Fishings as this will enhance economic sustainability in crofting areas.

However, The Isle of Eigg Heritage Trust remains concerned that the provisions of the Bill are still too complicated and inflexible. This may severely undermine the likelihood of further community land initiatives and may result in the reforming aspirations of the Executive not being delivered.

The following areas of the bill are of major concern to the Isle of Eigg Heritage Trust.

COMMUNITY RIGHT TO BUY

Definition of the community body (section 31.1)
The proposed requirement for interested community members to set up a specific company limited by guarantee to register an interest in a precise area of land is too bureaucratic and fails to allow for other options already successfully applied.

Scottish Justice Minister Jim Wallace did not preclude other options last year when he stated that “to be eligible, a body must be constituted as a community trust, and should be incorporated in some way. The normal model would be a company limited by guarantee. …The key criteria are as follow: the community body must have the promotion of the interests of the local community as its primary object. The community body must be constituted so as to guarantee its financial probity, and to ensure benefits do not flow to members as individuals. “ (source: www.scotland.gov.uk/library 2/doc01/lrlpl-0.1.htm )

Other types of community body, including Partnerships (e.g Knoydart Foundation), Trusts (e.g Isle of Eigg Heritage Trust), Friendly Societies should be acceptable as long as they are incorporated.
The Community Body membership (section 31.1.d)
A minimum membership of 20 persons continues to fail to take account of the small nature of many rural communities. It should be reduced to 10, so that smaller communities are not discouraged to register an interest.

Majority of the members of the company is to consist of members of the community and have control of the company (section 31.1.e/f)
This is commendable in principle but in practice, had the Highland Council and HIE been constrained in the past by this definition, none of the major community purchases of recent years would have occurred, including the Isle of Eigg buy-out. Within the Isle of Eigg Heritage Trust, community members of the board have 50% of the seats but are not in a majority. Since the remaining 50% are equally split between the other two partners of the community within the Trust, and considering that these two partners have contributed greatly to the success of the partnership, it would be more realistic to state that at least 50% of the members of the company is to consist of members of the community to ensure a strong degree of community control within the company. The fact is that running a company limited by guarantee and a large area of land demands skills that communities are hard pushed to acquire at present. There is a great advantage for communities in working in partnership with bodies which can lend their expertise and their time. Restrictions which are meant to ensure community control would actually become disadvantageous for many communities.

A community shall be defined by reference to the polling districts in which the community body proposes to register an interest (31.4) This is probably the biggest flaw in the Bill. This does not take into account the fact that in a great many cases, polling districts do not properly reflect the local community of interest.

For example, Eigg is within a polling district encompassing all four islands in the Small Isles. Would it be right to ask residents of the other three islands to vote on the affairs of the Eigg community? Would it be right for the residents of Eigg to vote on whether the isles of Muck, Canna or Rum should operate a community buy-out? Certainly not. What defines each island uniquely is its own post-code, so that people living in that postcode unit represent a local community of interest.

Community areas should therefore be defined on the basis of detailed postcode units, building up to form the community of interest. This should be on a self-determining basis, subject to an appeals procedure to the relevant local authority where communities in adjacent postcode unit areas consider they should be included (or excluded).

Duration and renewal of registration (section 41.2)
This is far too cumbersome: a land area for which a community registers an interest may not come onto the market for decades (if not centuries), yet renewal of interest by re-registration is expected every five years. Any need for renewal of interest should simply be by written reiteration. The existing provision that any changes in the Memorandum s and Articles is to be stated should be enough to keep track of any changes in the community body.
Balloting (section 68.3,i,ii)
A minimum 50% response to a local ballot on whether to proceed with purchase is very onerous (turn out for community council election rarely reach that level) and not even necessarily representative of the local community of interest if linked to registered electors within polling districts. A simple majority of a poll within the community area as defined by postcode units should be sufficient to demonstrate local support for land purchase, as in General Elections.

Assessment of value of land (section 55.7.a)
Taking into account any “peculiar interest” of a person in the valuation of land could distort the price well above what could be considered a general average. The land should be assessed at what can reasonably be accepted as customary and typical values for land in the area.

Salmon fishings and mineral rights (section 66)
That community bodies should be able to register an interest is very welcome. The Isle of Eigg Heritage Trust also supports the Highland Council view that provisions should be made within the forthcoming Local Government Bill for ill-managed salmon fishings to be compulsorily purchased by Local Authorities on behalf of communities under the proposed power of community.

Ministerial Discretion (throughout)
There are many instances where decisions can be taken at “ministers’ discretion”. Whilst the definition of sustainable development is welcome as the basis for Ministerial discretion, this remains too general. The basis for decisions made at ministers’ discretion should be in the public domain in the form of relevant guidance, e.g. contained in schedules to the legislation, or subsequently published.

Compulsory Purchase Powers: Enhancement of existing Compulsory Purchase Powers has been removed from the Bill and nothing put in its place. Moreover there is nothing in the Bill to help communities access land where it is a key area of strategic importance for a community development (housing for instance) or as last resort in cases where a landowner displays irresponsible behaviour towards the public interest. Meanwhile a Code of Good Landownership has been devised. This code should be accompanied by measures encouraging landowners to consult the local community and/or making grant aid conditional on community consultation.

CROFTING COMMUNITY RIGHT TO BUY

The Crofting Community Body
The same objections as for the community body regarding size, membership and balloting apply.
The relevant Grazings Committee(s) should take the initiative in setting up crofting community bodies and should nominate the majority of directors within the Crofting Community Body, with the remainder elected from the wider community, to avoid a crofting community body being controlled by persons having no interest in or understanding of crofting.
Tenant Farmers’ Right to Buy:
The Isle of Eigg Heritage Trust also supports the Highland Council’s view that provisions should be included in the bill for tenant farmers to purchase land. There should be provisions for a tenant farmers’ right to buy either within this bill or within forthcoming agricultural holdings legislation. This should preferably be along the lines of Part Three (tenant farmers’ right to buy at any time) or, if it were still considered that this would risk halting the letting of land, along the lines of Part Two (tenant farmers’ right to buy at sale/transfer). In this latter case, however, this should also be possible at transfers on inheritance. The valuation should be at open market value as determined if necessary by the Land Court. To ensure its continued use for agriculture, such land should be zoned for agricultural and ancillary use in Local Plans.

J Chester, Reserve Manager and Camille Dressler, Director
SUBMISSION FROM SCOTTISH ENTERPRISE

Introduction

The Scottish Enterprise Network (SEN) welcomes the publication of the Land Reform (Scotland) Bill and its introduction to the Scottish Parliament. We believe that land reform will contribute substantially to the development of rural communities.

This paper begins with a brief overview of SEN’s relevant interest and activity, discusses some potential issues relating to the Bill and its implementation and finally comments on the changes made to the draft Bill following the consultation period.

Overview of SEN’s interest and activity

SEN is very active in rural areas. An estimated 16% of total SEN expenditure is on projects located in rural areas, a figure roughly comparable to their share of population across the SEN area. Local Enterprise Companies within the Network undertake a full range of skills, business development, property development and environmental activities in rural areas, meeting local needs and actively encouraging rural entrepreneurship and enterprise development.

During 1999 SEN established a Network Rural Group to enable the development and sharing of best practice in relation to rural development, as well as aiding a cohesive Network response to new initiatives. At that time a SEN Community Land network was also established to promote community-led land purchase or management initiatives and to provide advice and support for community land initiatives within the broader context of our strategic goals. The work of this ‘virtual team’ has seen around £150,000 of SEN funds used to support community land projects. An example is given below:

<table>
<thead>
<tr>
<th>Morebattle - Remote rural village in Borders</th>
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<tbody>
<tr>
<td>• 3 small businesses - 2 redundant farm workers: 8 existing jobs</td>
</tr>
<tr>
<td>• All constrained by premises</td>
</tr>
<tr>
<td>• Joined together acquired 1.5 acres to develop small industrial site</td>
</tr>
<tr>
<td>• Result - 9 new jobs, private investment £139,000;</td>
</tr>
<tr>
<td>• Scottish Enterprise Borders contribution -£35,000</td>
</tr>
</tbody>
</table>

In general, SEN regards the Land Reform Bill as a key enabling mechanism for opportunities such as that which existed within Morebattle to be realised.

SEN is currently supporting HIE’s lead role in administering the Scottish Land Fund. Ten projects in the SEN area have been approved for funding by the Land Fund since its inception at the beginning of this year, many of which have involved communities acquiring land.
Our views on the principles of the Bill and its implementation

Principles

Benefits

From a SEN perspective, the potential benefits from the Bill would primarily arise from Part 2 of the Bill - ‘Community Right to Buy’. These may include:

- Opening up development where land owners may previously have restrained development for reasons of competition etc.
- Developing economic/social outputs from land/resources that might otherwise be left, creating a potential for jobs and income in rural areas. This could include opportunities for new start-up businesses, existing small rural businesses and tourism.
- The ability to harness, and find an outlet for, local skills in exploiting new opportunities, helping to build communities through retaining and attracting talented people.
- The ability to keep resources/land for long term community use, creating an asset with a value which goes beyond the immediate short term development opportunity.
- Providing communities with more time to raise the appropriate funds before having to make an offer. We are aware of situations where communities (e.g. Gigha), due to constraints on offer periods imposed by landowners, have had to retrospectively raise significant funds to pay back purchase loans – not always feasible.

Disbenefits

The Bill could have a negative effect in the following way:

- Communities buy land for ‘NIMBY’ purposes, to effectively stifle development
- Estates may rethink or reduce investment on the basis of uncertainties re. Access.
- There may be some issues which arise from situations where land has been zoned for commercial use but a community interested in acquiring the land has no desire to invoke this planning opportunity. This suggests a rather complex relationship between the Community Right to Buy provision and existing local planning policies. Land development plans may have been determined to meet certain business/commerce demands and growth patterns but the community buy-out right may potentially interfere with this.

Implementation

We believe that careful consideration would have to be given in relation to the process by which communities approach the acquisition of land. In particular, communities need to be guided to fully consider whether community ownership of
local land will best assist the economic and social development of their area, i.e. is this really the best option?

A suitable decision-making process for communities may include consideration of:

- Why they want land
- What they want to do with it
- How to ensure wide community involvement - defining the community and ensuring sufficient ‘buy-in’
- Valuation and funding – where will match funding come from? (now addressed partly by Scottish Land Fund)
- A business plan which considers the capacity of the community to put bid together and manage the land in the longer term

Our views on the changes made to the Draft Bill

Generally, SEN welcome the changes made to the draft Bill and only has a few comments to make here:

Part 2 - Community Right to Buy

- We would suggest that provision should be made for existing representative bodies as well as new ones to register an interest in land, e.g., community councils, community associations, local development trusts.
- The minimum requirement for a community membership of 20 may exclude bids that involve a smaller number of partnerships or consortia, which of course can in reality represent a number of individual interests.
- In relation to the definition of “community”, the strict use of polling districts is not appropriate in many rural situations. Communities should be allowed to define themselves with applications to Ministers being the endorsed by the local authority, local enterprise company or local economic forum.

S Gemmell
Senior Public Affairs Executive
SUBMISSION FORM THE ROYAL INSTITUTION OF CHARTERED SURVEYORS IN SCOTLAND

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) welcomes the opportunity to submit written evidence on the Land Reform (Scotland) Bill. RICS Scotland represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and probationers. They practise in sixteen land, property and construction markets. Members of the Institution’s Rural Faculty are responsible for the management of the vast majority of Scotland’s land resource, acting for landowners and tenants alike, both in the private and public sectors.

RICS Scotland has played a full part in the land reform debate since the Land Reform Policy Group (LRGP) was established in October 1997. Throughout this process, the Institution has attempted at all times to provide constructive input, focussing its responses on the practical implications of the proposals as opposed to the ideology. In this respect, it is important to recognise that RICS Scotland has a commitment, as part of its Royal Charter, to protect the public interest, as well as reflecting the interests of its membership. The Institution represents neither the interests of landowners nor the interests of tenants or community groups. Rather, our aim is to ensure that the legislation has no negative effects on the sustainable management of the land resource, in economic, environmental and social terms.

As requested, the following comments focus on the changes which have been made to the Bill following the Scottish Executive’s consultation on the draft Bill. On behalf of RICS Scotland, I hope these comments will be of interest and assistance. Should you wish clarification on any of the points or should you seek further information at this point, please do not hesitate to contact me.

L Raeside
Head of Public Policy

PART 1: ACCESS

Section 2: RICS Scotland welcomes the inclusion of a specific reference to “responsible” exercise of access rights, which should assist in managing access more effectively. However, although this Section outlines instances where a person will not be considered to be exercising their rights responsibly, there is nothing in the Bill which allows action to be taken against those acting irresponsibly. It might be argued, therefore, that the reference to “responsible” has no real weight.

Section 3: The Institution agrees that land managers should be expected to act responsibly and we therefore welcome the reciprocal obligation for them to do so. However, we are gravely concerned that there is now a lack of balance in the Bill: the sanctions against irresponsible access have been removed and yet the sanctions against irresponsible land managers remain. For example, Section 14 allows local authorities to take action against irresponsible land managers and to recover the costs for so doing. Similarly, if land managers fail to reinstate a path after ploughing, they will be guilty of an offence and liable on summary conviction to a fine. Such a lack of balance will inevitably lead to conflict, which would be unfortunate in a country where land managers and
recreationalists have traditionally worked well together in integrating land management and recreational interests.

Sections 2 & 3: We note that the Code will now have evidential status in determining responsible behaviour. While this change is no doubt to be welcomed, the Institution is gravely concerned that the Scottish Parliament is considering the Bill without considering the content of the Code. Given that the Code will play such a significant role in the implementation of this legislation, a parallel consultation exercise would have been advisable. It should also be noted that the Code no longer has the support of all members of the Access Forum.

Section 5: Liability has long since been a particular concern of RICS Scotland. Although the Scottish Executive has argued that it has now addressed these concerns, the Institution remains of the view that changes are required to the Occupiers Liability (Scotland) Act 1960, in order to pass the burden of liability from the owner to the access taker. Essentially, the legislation should be drafted in such a way that makes it unambiguously clear that people exercising the right of access do so at their own risk and will have no claim against the occupier of ground for personal injury or other loss, however sustained, whilst exercising that right.

Section 7(7)(b): RICS Scotland is delighted that the definition of cropped land now includes grass grown for hay or silage purposes, which are essential crops for farmers in many parts of the country. We would also suggest, however, that the definition be further extended to include grass sown for turf and for grass seed production. In addition, the Institution would strongly recommend that enclosed fields where livestock are grazing should be excluded. Livestock, particularly cows with young calves and bulls, do pose a threat to people on foot. On the other hand, people, especially those with dogs, pose a threat to sheep with lambs.

Section 9(2)(a): The exclusion of business and commercial activities from access rights is wholeheartedly welcomed by the Institution. We have always argued that those wishing to make a profit from exercising their rights of access should seek permission to do so. Past experience demonstrates that such permission is usually granted.

Sections 13 and 17 – 21: The Institution is pleased to note that duties have been placed on local authorities to “assert, protect and keep open from obstruction or encroachment any route or other means by which access rights may reasonably be exercised.” We also agree that local authorities should have duties to establish systems of core paths. Indeed, we see this role as central to the success of managed access. However, RICS Scotland is not convinced that the duties in Sections 17 – 21 are sufficient. Section 17 states that local authorities have a duty to draw up a plan for a system of paths, while Section 18 provides for them to adopt the plan. However, nowhere does it state that the local authority must implement the plan. In order to manage access effectively, the creation of new paths is essential to address the current shortage of footpaths, particularly in urban fringes. Accordingly, there must be a duty on local authorities to implement the plan and physically establish paths.

Section 26: RICS Scotland welcomes the introduction of the provision related to the protection of the natural heritage. However, we fear that this provision may not go far enough. Not only is there no provision to allow SNH to erect fences in order to protect the natural heritage, but also the Bill itself encourages access to unsown headrigs, endrigs or other margins of fields in which crops are growing. Encouraging access to these areas
fails to recognise the fact that many field margins are managed for conservation purposes, often under new environmental aid schemes, such as the Rural Stewardship Scheme (RSS), with the aim of providing nesting areas for breeding birds and insects. If the Bill is to complement Scottish Ministers’ commitment to protect and enhance the biodiversity of Scotland, this Section must be strengthened.

Section 8 of Draft Bill: We fail to understand why the powers of local authorities to suspend access rights for reasons of emergency, e.g. as a result of extreme weather, have been removed. Surely this provision was included for the safety of those exercising access rights and should therefore be reinstated.

Section 9 of Draft Bill: Of grave concern to RICS Scotland is the removal of the provision allowing land managers to suspend or divert access rights temporarily for land management purposes. The removal of this provision will cause serious problems for the day-to-day management of the land resource. It effectively means that those who derive their living from the land will have to manage that land subject to the actions of those exercising their rights of access, as opposed to access being integrated with existing land management practices. The inability to manage access effectively points once again to the lack of balance in the Bill, where the rights of those taking access appear to take precedence over the rights of those who live and work on the land. We urge the Scottish Parliament to re-introduce this provision, which is essential to the successful implementation of the legislation. At the same time, we do appreciate that balance is necessary and we would be happy to see the introduction of checks and balances to ensure that land managers do not abuse such a provision.

Section 15 of Draft Bill: RICS Scotland is disappointed that the legal remedy, which we believe is necessary to balance the new right, has been removed from the Bill. The removal of the offence provision, whereby a person who persistently contravened the Access Code or acted irresponsibly could be guilty of an offence and liable to a fine, means that a land manager has no means of protecting the land resource from irresponsible persons. It is also inequitable as there remain opportunities to take sanctions against land managers, as is outlined above. Those exercising their rights of access responsibly would have nothing to fear from such a sanction, yet it would provide an important mechanism of last resort for land managers.

Section 16 of Draft Bill: Similarly, the Institution is concerned that the exclusion provision, whereby the local authority could exclude persons they believed to have persistently contravened the Access Code or to have acted irresponsibly, has been dropped. Again, this provision provided an effective mechanism of last resort, where land managers were experiencing extreme problems as a result of the access rights. Without this necessary balance, RICS Scotland is concerned that successful implementation of the Bill will prove difficult.

PART 2: COMMUNITY RIGHT TO BUY

Section 31(1) and (2): RICS Scotland is concerned that the minimum size of community body has been reduced from 30 to 20 people. In view of the commitment required for land ownership and on-going management, the support of a greater number from the community should be required. We appreciate that this reduction in number may have been proposed in order to address situations where the community itself is very small; however, Ministers do have discretion for small communities in exceptional circumstances. As a general rule, therefore, we would suggest the minimum should be retained at 30.
Section 36: The Institution is wholly opposed to the concept of retrospective applications. We had understood that the purpose of the pre-registration process was to ensure a degree of certainty in the property market. Certainty is essential (a) to ensure that landowners are not disadvantaged by the right to buy process and therefore eligible for compensation; and (b) to ensure, more importantly, that landowners will not be discouraged from investing in their properties in the fear that the right to buy might suddenly come into effect. The possibility of late applications removes the degree of certainty altogether. Of further concern, is the possibility that a community body which has taken the time to pre-register its interest may be “gazumped” by another community body which suddenly expresses an interest in buying the land once it has come onto the market. This cannot be equitable.

Section 37: RICS Scotland agrees that those transfers which are exempt should be listed in the section on the effect of registration. We consider that this change helpfully clarifies the position as regards the types of transfers which are exempt. We fail to understand, however, why a transfer of croft land to the crofter tenanting it is exempt, when a transfer of an agricultural holding to the farm tenant is not exempt. Such a distinction does not appear equitable.

Section 44: It is noted that the position of a creditor in a standard security with a right to sell land has been clarified. While this clarification is welcomed, the Institution is concerned about the degree of information an owner might have to provide to a community body in respect of a standard security. Some of the details relating to a standard security might be commercially sensitive and should be confidential between the owner and the lender. Such information should not, therefore, be provided to a community body.

Sections 46 and 54: The Institution agrees that the replacement of the compulsory purchase powers in the draft Bill with the new community right to buy, where the owner has acted in breach of the Act, is sensible.

Section 50(5): We welcome the explicit statement that a landowner has the right to decide not to proceed with the sale.

Section 55(7): RICS Scotland is extremely disappointed that the ability to “cherry-pick” land has been re-introduced to the legislation. When the land reform proposals were originally announced, the Institution voiced considerable concern about the implications of “cherry-picking”, pointing out that an estate may only be a viable unit as a whole and that there may be a definite reduction in the value of the remainder, if community bodies were allowed to “cherry-pick”. In this respect, we would be interested to know whether a lower limit will apply, i.e. could a community body register to buy as little land as it likes? In all likelihood, communities will be most interested in the better quality low ground around villages. The removal of this land could seriously compromise estates which rely on both the high and the low ground together, e.g. where stock come down from the hill in the winter or where crops are grown on the low ground. The separation of the low ground from the upland hill grazings could make the latter almost worthless. Although our concerns were addressed in the draft Bill, they have arisen once again now that the Bill itself has been published and the ability to cherry-pick has been re-introduced.

We do appreciate that the valuation of the land is to take into account the diminution in value of the remaining land. Indeed, this provision is essential if communities are to be allowed to cherry-pick. However, it should be noted that, although it will be possible for a
valuer to calculate the diminution in value, problems may arise as the hill ground may not be marketable as a result of the removal of the low ground. Certainly, community bodies should be aware that the value of the land they wish to purchase may rise substantially and could be out of all proportion to the cost of the parcel of land required.

In calculating diminution in value, the valuation principles will have to be laid down very clearly. One possible principle might be that: “The Community shall pay the greater of (i) the open market value of the area of land in which they have registered an interest; or (ii) the difference between (a) the open market value of the whole area of land for sale and (b) its value with the land which the community wishes to buy removed from it.” Given that RICS Scotland is the professional body in Scotland representing the valuation profession, the Institution would welcome the opportunity to discuss the valuation principles in further detail.

**Section 57:** RICS Scotland welcomes the extension of the scope for appeals which has been broadened so that they can relate to any relevant issue, and not just points of procedure.

**Section 46(3) of Draft Bill:** The Institution welcomes the removal of the general power of Ministerial discretion in relation to the criteria for registration. We were concerned that Sheriffs would find it difficult to establish grounds for appeal if Ministers had wide powers of discretion.

**Section 73 of Draft Bill:** RICS Scotland is seriously disappointed and concerned that the controls on the disposal of land by a community body have been dropped. Although Section 31(1)(i) provides that, on the winding up of the community body, any land acquired under the Act will pass to another community body or to Ministers, there is nothing to prevent a community body selling the vast majority of the land it has acquired, provided that the community body itself remains in place. Effectively, this means that a community body could acquire land at agricultural value, obtain planning permission and sell it at development value, making a substantial profit along the way. Surely asset stripping of this nature is not the goal of the legislation? RICS Scotland urges the Parliament to re-introduce these controls.

**CROFTING COMMUNITY RIGHT TO BUY**

**General:** The Institution is extremely concerned about the implications of a right to buy which can be exercised at any given time. Granting a right to buy at any time is tantamount to expropriation and we fear that this could seriously harm investment in very fragile rural areas, with landowners being unlikely to invest in landholdings if there is even the slightest risk that they will be forced to sell their property. If crofting communities are to be granted a right to buy, it should be along the same lines as the general community right to buy.

**Sections 65, 66 & 67:** It is noted that the definitions of eligible croft land and additional land, including the application to salmon fishings, have been clarified. RICS Scotland is gravely concerned about the decision to include salmon fishings within the crofting community right to buy provisions. Salmon fishings have never been part of crofting tenure. They are separate heritable rights which are by far the most valuable assets in the crofting counties. The capital value of salmon fishings does not, however, bear any relation to income from letting. Indeed, the capital value has increased significantly on a per fish caught basis, despite the fact that salmon returns have fallen. If crofting
communities buy salmon fishings at market value (which they will be required to do in order to avoid conflict with ECHR), the return on letting will not, in the Institution’s view, offset the original cost of purchase. Furthermore, not only will money be required to purchase the salmon fishings, but also a typical salmon system will require substantial working capital to provide for plant and machinery, fixtures and fittings, salaries etc. Not only do proprietors of salmon fishings have a financial obligation to the District Salmon Fishery Boards, but more importantly, proprietors themselves input substantial investment on a voluntary basis, providing infrastructure, riparian habitat projects, research and stock restoration. Such investment provides an essential contribution to the sustainable management of Scotland’s fisheries and to the sustainable development of local communities. Essentially, although the crofting community will no doubt have the expertise to manage the salmon fishings, it is questionable whether they will have sufficient resources to do so effectively.

Section 66(3): Notwithstanding our views on the inclusion of salmon fishings, should this right proceed, RICS Scotland does welcome the decision to reduce the period during which salmon fishings may be bought from five years to one year. We had expressed concern that where a proprietor was under threat of appropriation of his/her fishing rights for a period of five years, there would be a danger that he/she would not invest essential time and money in the maintenance of the waters, river banks and spawning grounds because of the uncertain future. Lack of management and investment would create a significant threat to the improvement of salmon runs. This reduction is therefore welcomed. We do not understand, however, why the same reduction has not been applied to mineral rights. The five year limitation period will effectively make the rights worthless in the intervening years, thereby resulting in blight. Difficulties could arise if the owner dies and the executor wishes to sell the rights; not only would it be difficult to find a purchaser, but more importantly the rights will be of little value. In addition, the five year limitation could impede any development taking place within that period which could be to the detriment of the sustainability of the area.

Section 68(1)(d): As above, RICS Scotland does not welcome the reduction in the minimum size for a crofting community body to 20 members.

Sections 70 & 71: As above, we support the removal of certain elements of Ministerial discretion. Essentially, the Bill should provide clarity and certainty, which cannot be achieved where there is a large degree of Ministerial discretion.

Section 72: The Institution is gravely concerned that the requirement contained in Section 82(1) of the draft Bill, requiring at least 50% of the crofting community to vote, has been removed. Effectively this means that a very small number of the crofting community can push through a community purchase. Not only does land ownership and on-going management require a significant degree of commitment, but also it is questionable whether such a process is democratic.

Sections 74(2) & 76(3): We welcome the provision that any person with an interest in an application to buy additional land should be given a right to make representation to the Land Court when that application is referred to the Court. This provision should ensure that the views of the wider community will not go unheard.

Section 78(1): Similarly, we welcome the provision that all those with an interest in a crofting community right to buy application may refer issues relating to that application to the Land Court.
Section 85(6): RICS Scotland agrees that assessing compensation for depreciation and disturbance as part of the valuation process, rather than at a later stage, would be sensible. Including the compensation element at this stage, will ensure that the crofting community body is aware, as early as possible, of the costs involved. Accordingly, aborted sales may be prevented, i.e. in cases where it becomes apparent that the crofting community body cannot meet the compensation costs. However, there must remain an opportunity for a further claim to be made after the land has been acquired, as is the case under existing compulsory purchase legislation. This provision covers the situation where the activity on the acquired land causes the value of the landowner's remaining land to depreciate further. In addition, it must be borne in mind that compensation for depreciation and disturbance may be extremely high. As regards the method of calculating compensation, we would suggest that the Compensation Code should be used as it is a tried and tested method of calculating compensation.

Section 103 of Draft Bill: As above, RICS Scotland is gravely concerned about the decision to remove the restrictions on re-sales from the Bill. We would urge the Scottish Parliament to re-consider this matter.
SUBMISSION FROM THE SCOTTISH LANDOWNERS FEDERATION

General Overview

Part I Access

The SLF has worked constructively with a range of organisations on the Access Forum to bring forward a balanced package of measures to help improve opportunities for public access to the outdoors. In particular, we are keen to assist in developing recommendations that would provide practical integration of public access and land management activities together with clarity for the public and landowners alike with regard to access to the countryside.

Having taken advice we are, however concerned that Part 1 of the Bill does not strike the "fair balance" which the Scottish Executive has stated that it is intended to achieve. Very disappointingly and surprisingly, we have not been given time to consider the Access Code, a draft of which certainly ought to have been available much earlier.

In the Explanatory Notes accompanying the Bill, the Executive identified certain Convention Rights (as defined in the Human Rights Act 1998) that may be applicable. We agree, and consider that articles 8, 14, article 1 of protocol 1, and articles 6 and 13 all have relevance. Certain members of the SLF, for example, the farmers who live and work on their land, are entitled to "respect" for their home and privacy. Their "home" is indistinguishable from their place of business in this context.

Part I of the Bill is not necessary: existing law already contains mechanisms through which the Scottish Executive’s policy objectives could be met. We outlined these as part of our response to the draft Bill...a well-funded and maintained core path network with real rights and responsibilities on all parties. A whole host of alternative and less intrusive measures could be considered. There is absolutely no question of a "pressing social need" in this context.

It appears that the interests of our members’ rights to their home and business life, property and possessions which are all protected interests, has been subordinated to the general public’s right to access for "the enjoyment of the countryside etc.". There is no protected right to access to the countryside. The steps that have been proposed in the LRB disregard many of the items which the SLF considered necessary, so as to strike the right balance in the original draft Bill. Of particular concern are:-

(a) The removal of the provisions that would have enabled landowners (or the Local Authority) to consider temporary restrictions on access. This would allow for a degree of local flexibility. For example, consider the loss of revenue to an area due to the inability to carry out an ad-hoc concert or marquee-based parties or a particular one-off shooting event.
(b) There is no provision in the body of the LRB providing for compensation for damage and degradation to the land. There are compensation provisions that have been "saved" from the Countryside (Scotland) Act 1967. It is far from clear that compensation under the 1967 Act is also to be applied in relation (a) to a general use by the public of access rights and (b) in relation to any Paths Order. In any event the 1967 regime is not in any sense comprehensive: (i) it does not facilitate any loss of profits caused by a particular access route being utilised; (ii) only seems claimable after the lapse of 5 years from an order; (iii) can a claim include any outlays and costs incurred by the landowner in taking steps to make his land "safe"?; what of higher insurance premiums?

(c) There appears to be no time limit on paths and access rights. This could create a lack of flexibility should circumstances change.

(d) The introduction of enforcement provisions by the use of byelaws creates the spectre of possible criminal sanctions against a landowner in relation to the conduct of his trade or business. It is to be seen whether the full extent of the various competing responsibilities are catered for by the Code.

(e) The provisions relating to the delictual liability of the occupier are inadequate.

(f) The primary liability for safety is still placed on the landowner.

We consider that the measures employed are disproportionate.

Part 2- Community Right To Buy

SLF has no difficulties in principle with community ownership of land. We recognize also that this part of the Bill only relates to an owner who wishes to sell land.

We reject however the assertion that because a community body wishes to acquire an area of land, and can make a case of doing so, then there is to be a presumption that this is to be in that community's best interests. No comparative test of ultimate benefit to the community is considered.

Our detailed comments on the principles of, and changes to this Part of the Bill focus on our concerns about the consequential impact on owners’ propensity to invest in their property, and on how the legislation could be misused for personal gain by individuals in a community.

Part 3- Crofting Community Right To Buy

SLF is wholly opposed to the principle of Part 3 of the Bill. Crofting tenants have had the "right to buy" their house site, croft land and share of grazings on terms favourable to them since 1976. In no sense do the proposals in the Bill build upon or add to that
right. The Bill goes in a completely different direction, introducing a straightforward
expropriation of private land by a private company, possibly assisted by public funding,
and without any statutory environmental or social objectives or obligation to deliver on
its declared aims.

We consider that the existing provisions, the 1993 Crofters (Scotland) Act, provide an
acceptable means of achieving the aim of this Part. *The inclusion of salmon fishings
as "eligible land" is disproportionate to the aim of Part III.* The approach appears
to be arbitrary. There is no justification from removing this from the "eligible additional
land" scheme so that each individual case could be separately assessed by the Land
Court.

**Ministerial Discretion**
Throughout the Bill as introduced we continue to find apparently unnecessary situations
where Ministers can exercise discretion, or vary tests to be applied before actions can
be taken. It is not always clear, even as between the text of the Bill and its Explanatory
Memoranda how such variations might be operated, and thereby these may remain
open to political interference once the Bill is enacted. This applies further to the
frequently found qualification that Ministers failure to act within set time scales shall not
void their decisions--this provides little comfort to the affected parties, and may even
jeopardise their rights to appeal decisions.

*On the attached pages we offer our detailed comments on the principles of each
part of the Bill and the consequences of recent changes.*

**PART 1 - ACCESS RIGHTS**

**Principles**
The SLF is on record as supporting the Government’s wish to improve countryside
access. We are deeply disappointed therefore that the Bill singularly fails to address the
obstacles to creating “better opportunities for the public to enjoy the outdoors”. The key
obstacles, we believe are: the need for clear duties on local authorities for the creation,
management and maintenance of paths and core paths; the resolution of the issue of
liability so that people enjoying access do so at their own risk; and the requirement for
targeted funding for access, and that this should be “ring-fenced” for the first five years.

With respect to funding we are particularly concerned by the statement in the Financial
Memorandum that with regard to local authorities, “organised volunteering” could
significantly reduce the costs of establishing core paths. This indicates a failure to
recognise the duty of Government to properly fund these far-reaching proposals. In
effect it is introducing a “right” of access, but demonstrating a clear reluctance to
funding better access opportunities.

We are disappointed that the Code, which underpins so much, is not available during
this consultation period. We believe that it is unreasonable to be asked to respond to a
Bill that relies on an unpublished document for much of its definition – the detail of which can only be guessed at.

While Ministers have assured us that “balance” is a keyword – we suggest that imbalance is the reality as the Bill is now drafted.

In this necessarily brief response to the Bill we ask that you refer to our response to the draft Bill, which examined in detail the issues below. Where we especially wish you to revisit our earlier response this is signalled in the text.

**Changes**

- The removal of the power of landowners and managers to temporarily suspend or divert access will cause real problems for the day to day management of land, it will have a negative impact on a range of land management businesses and it will compromise public safety. This, coupled with the obligation to manage land in a way that respects access rights, apparently above all other considerations, will mean in effect that land management is subservient to access. *(See para 3.4.1, SLF Response June 2001).*

- The removal of the sanctions against irresponsible access, while the sanctions against irresponsible land managers remain, is another example of the lack of balance in the revised Bill. *(See para 3.4.5).* That there are now no remedies against irresponsible access places owners in an unacceptable position, and leaves the right of “responsible” access open to abuse. We could ask, what value is a Code with evidential status – when there is no sanction against irresponsible access?

- There is considerable disparity between what is in the Bill and the Code for owners and for the public. For example, controls on owners of land are within the Bill, yet controls on the public will, we imagine, be in the Code. The SLF believes that there needs to be equity for all concerned, and that both the Bill and the Code, independently and collectively, should demonstrate this. For consistency and balance we suggest that the controls on owners – mostly sections 14 and 22 – should be in the Code. However, the degree of sanction against owners must be called into question as there are no sanctions against irresponsible users, and this requires to be looked at in detail if the Bill reaches Stage 2. *(See para 3.4.4).*

- The section on **Byelaws** suggests that local authorities could make Byelaws for, amongst other things, the regulation of the use of vehicles, sporting and recreational activities etc. – in order to protect and further the interests of people exercising the right of access. While the local authority will have to consult with the owner of the land the owner’s permission is not required in order to establish the Byelaw. This is of concern in terms of the ability of owners to manage their land and the level of interference that they and their land management activities can be subject to. *(See para 3.4.3).*
The Bill proposes changes to the 1865 Trespass Act to allow camping. It appears that this amendment will mean that the public is also permitted to light fires, which is both unnecessary and unacceptable. We are especially concerned about the insurance risk for owners, associated with the random lighting of fires.

With regard to liability the Bill does not provide a satisfactory resolution to the issue. (See paras 2.2.1 & 2.2.2). It is clear that a right of access (for a variety of activities) to all land and inland water, at any time of day or night, will result in greater access and increased exposure to claims. This increased burden of liability is unacceptable and further illustrates the imbalance of these proposals.

Collectively the changes within the Bill will have a damaging impact on conservation activity. In particular we do not believe that the conservation measures in Section 26 are adequate, and that where necessary, with the agreement of the owner, SNH should be able to erect fences, or carry out other works for conservation purposes. (See paras 2.6.1, 2.6.2 & 2.6.3).

The SLF welcomes some of the changes that have been made. In particular we support the following – the inclusion of specific reference to “responsible” exercise of access rights; clarification that the Code will have evidential status; the exclusion of contiguous school grounds from the right; the confirmation that grass grown as hay & silage will be treated as a crop; that access to golf courses will be for passage only; that business & commercial activities are excluded from the right (see paras 2.10.3 & 2.10.4); and the suggestion in the explanatory notes that local authorities will have a duty to establish core paths (although this does not appear in the Bill).

**Conclusions**

As drafted the Bill lacks balance and demonstrates little understanding of the needs of landowners and of the expectations of the public. Many of the so called “obstructions” – barbed wire, animals at large, electric fences and so forth, are simply elements of the Scottish countryside, they are not there to prevent access, they are facets of land management. We believe that public access can be integrated with land management, but that this Bill fails to recognise the mechanisms required for this to happen. It raises public expectations and fails to fund the infrastructure necessary to meet these. Through its lack of balance the Bill is in grave danger of creating a framework for conflict and confusion. We argue that without balance, landowners will be poorly served, and the public while having a “right” of access will not enjoy the “welcome” to the countryside that they desire.

**PART 2 - COMMUNITY RIGHT TO BUY**

**Principles**

The SLF repeats its contention that this legislation is unnecessary:- existing powers already reside with local authorities and enterprise companies for a range of purposes, and voluntary agreements could be facilitated. The process proposed will have a very real cost in the disincentive it will bring to owners’ propensity to invest, and to lenders'
willingness to make funds available, when the prospect of their ability to realise assets when required is likely to be subject to delay and anticipated below-market valuation.

The SLF cannot readily accept the restriction on any owner of land being able to sell property at a time of their choosing, to whom they wish and at a price they agree. Advertised open market sales frequently fail to achieve all these criteria, but as with private house sales it is not unusual for property to move very quickly, or to change hands by private sale. This legislation creates delay and potential dispute even where an owner might already have a purchaser interested. This may in itself jeopardise the viability of businesses, and the prospects of both employees and creditors.

We repeat our concerns that the proposals fail to differentiate in their impact as between "good" and "bad" landowners…the current owner bears the consequences in case they happen to sell to another. Whilst many owners may be sympathetic to selling land at the request of a community, there should be no presumption on their doing so. Whilst land reform appears targeted at individuals perceived to be wealthy and with extensive landholdings, this may not be the case in practical application, and other hardship may result.

We believe the policy "driver" for Part 2 has departed significantly from Lord Sewell's 1997 contention that availability of land was a constraint on the development of communities which lived on or depended upon it. The community body being enabled by this legislation need have no connection with the land being registered - its reduction in minimum size from 30 to 20 opening up more narrow bases of registration.

It is inevitable that the actual uptake of this legislation will depend on how rigidly Ministers apply the criteria proposed before interests can be entered into the Register, and then before purchases are approved. Other factors are the application of late registration procedures, valuation processes and the extent to which public money is made available to assist purchases. Together these factors can combine to facilitate or frustrate community purchases, or put alternatively, to severely or otherwise interfere in the property market in Scotland. As a mechanism, Ministers are therefore being granted a delicate, and responsible role which will require them to differentiate between short-term political popularity and the longer-term prosperity of Scotland's rural areas.

Changes

- The removal of the "as lotted" provision allows a community body, or bodies, to "cherry-pick" the valuable parts of any property, both in terms of economic value and strategic significance to the management of the wider property. Despite the instruction to the valuer to address this consequential loss, we remain to be convinced that the legitimate expectations of an owner to receive the true market value of his/her property will be realised.

- It should not be possible for a community body to sell off all, or even the majority, of any land acquired. Part disposal is acceptable if in order to finance sustainable development of the remainder, but significant or short-term disposals would imply
that land was not itself needed for sustainable development of the community, and that **capital was the limiting factor**. Few individuals, communities or businesses would admit that they have sufficient capital to do everything they might aspire to do-why then should Part 2 of the Bill facilitate trading of land, acquired from its previous owner under quasi-compulsory terms, as a means of raising capital for community projects?

- In turn the ability of community bodies to trade in land could allow legislation to be used to register an interest in any land likely to have development value and to obstruct planning applications until the community body is in a position to secure development gain for itself. (The purpose for the registration does not have to be carried through after acquisition). What will be the potential role of a community body, with an interest registered in a piece of land, if the current owner seeks to develop that land in any way? This could interfere with the willingness of any owner to seek planning permission and to bring forward land for development, ironically the opposite of the Bill's intention. The valuation process for land with prospect of development must therefore ensure that a valuer is enabled to address hope value in such a valuation.

- Despite long-standing assurances from the Scottish Executive that the community right-to-buy should not result in personal gain by members of the community, the effect of S31(1) and 32(1) could lead to a community body acquiring land, selling it to advantage on the open market, then changing its memorandum or articles to close down the company and divide assets between members of the company. There should be a requirement that the memorandum or articles address criteria on which any land can be disposed of.

- The late registration process has been retained, and made arguably easier to use. Potentially, every advertised sale could attract delay until communities organise themselves, and this would have the effect of driving many sales into private-treaty deals, without advertising. Such a development would be a distortion of the market, and would serve neither private purchasers nor responsible community groups. The existence of this provision should be time-limited, ie available only in the context of a community body not having had sufficient time, after the passing of the Act, to register an interest...perhaps one year?

- The Bill provides sanction against owners who breach its provisions. In fact the current drafting of S46 is very unclear and appears to strike not at the offending vendor but at a probably bona-fide purchaser. There is however no apparent sanction against a community body not acting in good faith. Despite a community purchase being justified in the "public interest", and in all probability using public funds to a significant extent, no test is proposed of community bodies delivering on their proposals. In time, a divided community could be trapped in the same paralysis of funding and poor management that is used to justify this legislation.
PART 3 - CROFTING COMMUNITY RIGHT-TO-BUY

Principles
These proposals are in essence unnecessary, wholly disproportionate, discriminatory and deficient in provision for fair balance. As a glaring example of the latter, in section 71(1)(o), why is the landlord's interest not to be considered in the definition of the "public interest"? There is no justification for not making the consideration of his position a duty on the Minister and Land Court, as the case might be.

Salmon fishing rights and mineral rights have never been seen as necessary for the management of a croft, and neither legislation nor the general law has ever given them to individual crofters. Forced transfer of these rights from one private entity to another - a crofting community body company, formed of private individuals - has not been justified.

The proposals have serious economic and financial ramifications. Many managers of crofting estates will be deterred from considering further investment in their properties because they will be deprived of security of title and cannot make assumptions about continuity. While the Scottish Executive seems to assume that the impact of the legislation will be low in terms of uptake, as evident from the Financial Memorandum, its assumption that the potential of being bought-out will encourage greater consideration of community needs by landowners may be seriously misplaced. A "bad" owner may well face the prospect of a buy-out... a "good" owner may not feel secure that he will not be subjected to the same fate, and will exercise extreme caution in investment policy.

The SLF repeats its conviction that this part of the Bill will effectively replace private investment in the ownership and management of crofting estates, with funding from public and charitable sources. Not only will private investment be lost, perhaps even from Scotland, but so also the benefit which might have been secured if this replacement funding had been applied to other public goods and services, as prioritised by the First Minister. Little else might be achieved, as the constraints of crofting tenure would continue to apply. Real progress could however be achieved by greater cooperation and joint funding, as suggested for renewable-energy projects in the Western Isles, using public money to secure additional development in these areas.

With regard to fishing interests, it is particularly unjust that the right could be selectively used to acquire only well managed, and immediately profitable fishings. Less productive fishings, requiring both investment and on-going revenue support are unlikely to show any ability to contribute to the sustainable development of the community, and may even prove a draw on this- as such they will prove neither attractive, nor pass the Ministerial test. This is not only unfair on the owners of valuable fishings, but a disincentive to those trying to improve their fishings.

Changes
The changes to the Bill fall into three general categories. First, there are those which make an unjustified piece of legislation more oppressive and unreasonable than it was.
• The revised treatment of salmon fishings and mineral rights as "eligible croft land", so that they lose even the protection of the statutory, Court applied, tests for transfer referred to in the draft Bill, simply makes an unfair process all the more so and leaves open new areas of uncertainty with regard to the real basis of ministerial decision making. Where is a statement of any such basis? Section 71 is an administrator’s checklist only.

• Why is only "support" required rather than "substantially support", in order to justify the inclusion of the salmon fishings? This test, in terms of section 71(1)(l) comes to apply salmon fishings as a result of their reclassification as "eligible croft land". The effect is to allow ministers to sanction the acquisition of salmon fishings on the plea that they offer even minor advantage to a crofting community body company which is acquiring or has acquired other subjects. Under no conceivable circumstances can deprivation of private rights be justified on such a flimsy basis.

• The removal of the requirement that over 50% of the crofting community must vote in the ballot as referred to by the Scottish Executive in fact is replaced by a new, dual requirement for 50% of those voting, as well as 50% of those voting who are actually croft tenants in the relevant areas. This new requirement gives an illusion only of a more secure mandate to proceed with an application to acquire. In reality, the removal of the fifty percent of franchise threshold will allow the ballot requirement to be met and an application to proceed even when the majority of active crofters, let alone members of their families and other residents, may never been engaged in the process of debate and decision making leading up to the point at which the proposal is put to the poll. In effect, not voting applies acquiescence to the purchase proceeding.

• Reduction in the minimum size for a community body to 20 (Section 68 (1)(d)) will, in common with the last change discussed, allow compulsory acquisition on a narrower base of individuals.

• We are concerned that complete removal of any constraints on land disposals may lead to speculative use of the right, for no other purpose than to secure financial gain for individuals in the company (See similar comment in Part 2).

Secondly, there is a category of changes to the Bill, the effects of which are in one respect or another unclear:

• In section 65, the use of the words "consists" and "contiguous" give rise to serious concerns over the exact extent to which salmon fishings rights on non-crofting land, and adjacent estates could be drawn into the definition of "eligible land". This appears considerably at odds with assurances given by the Scottish Executive at draft Bill stage.
All those with an interest in a crofting community right to buy application may refer issues relating to that application to the land court (Section 78(1)). This new provision does seem, at first sight to allow proprietors to raise a broad spectrum of matters which might be of concern to them, with the prospect that political, ministerial decisions could be shaped to some extent by Order of Court (Section 78 (3)(b)). Could social, economic and personal questions be referred to the Court? Could the Court make an order protecting an issue in one of those areas?

Any person with an interest in an application to buy additional land is given a right to make representations to the Land Court when that application is referred to the Court (Section 74(2) and 76(3)). While it is left to the Court's discretion to determine who, other than the crofting community body and the owner, have a relevant interest, some persons, such as tenants, agricultural tenants, security holders, and beneficiaries of trusts manifestly should have their representations considered as of right.

Finally there are also a number of changes which do not come into either of those two categories and can be regarded as either "tidying up" the administrative mechanism of the Bill or modifying it in apparent response to representations made.

As examples, increasing the time allowed for each of the main stages of the application process to 60 days will give all concerned greater breathing space in which to deal with very complicated issues. Extending the appeal provision to allow an appeal on any point of law is a matter of natural justice. So, too, is provision that valuation shall include compensation for appreciation and disturbance.

On the other hand, reducing the period in which salmon fishings may be bought does not in any way get over the fundamental error of principle on which the inclusion of these rights proceeds, although it may perhaps reduce the period of uncertainty in some cases.

Dr M Hankey
Director
SUBMISSION FROM HIGHLANDS AND ISLANDS ENTERPRISE

We welcome the publication of the Land Reform (Scotland) Bill and its introduction to the Scottish Parliament. Highlands & Islands Enterprise believes that land reform can and will contribute substantially to the sustainable development of rural communities, particularly in more remote areas. We have already seen positive impacts resulting from some of the community land acquisitions which have occurred, without legislation in place, over the last few years. Enabling communities to take control of land and other assets contributes substantially to enhancing the self-confidence and self-esteem of the individuals concerned. This, in turn, makes for greater self-reliance, more entrepreneurialism and the like. In Eigg for example, we have evidence of modest population growth and employment creation. New small businesses have been created on the island, a programme to upgrade the housing stock is underway, renewable energy schemes are planned and the island’s environment is being improved through a woodland management scheme.

HIE created its Community Land Unit in 1997 as a positive step to encourage the development opportunities we believe can emanate from land reform. To date, the Unit has assisted with 58 communities to acquire land. This has involved the purchase of smaller strategic sites, such as Port of Ness, Muiry Wood in Forres, as well as the higher profile extensive acquisitions, such as, Eigg, Knoydart, Bhaltos and Gigha. In addition, HIE has offered technical assistance to over 150 communities, in the form of legal, valuation, community development, feasibility and business planning advice.

HIE has contributed substantially to the comprehensive consultation process which has led to the finalisation of the Bill. We believe that the Scottish Executive have listened to the wide range of views submitted on the draft Bill and have presented an improved Bill to Parliament. We acknowledge that many of our suggested changes have been accepted and we are pleased to see these in the published Bill.

In particular, we support the ability of communities to acquire smaller plots of land, as well as larger estates and this is catered for in the new Bill. Similarly we acknowledge the new proposed arrangements to give registered crofters a direct say in the decision to acquire crofting land.

While these, and other proposals are welcome changes in the Bill, we believe there are some further suggestions which the committee might wish to consider:

Part 1 - Access Rights
- We note and support the considerable changes made to the Access section. Access to rural areas for informal as well as formal recreation is extremely important to local economies, as our work on the impact of hillwalking and mountaineering has shown. We would simply wish to emphasise the need for local authorities to be properly resourced in order to undertake effectively the duties conferred on them by the Bill.
Part 2 - Community Right to Buy
We believe there are still a few changes which ease the process by which communities can acquire land. These are as follows:

- **Registration of land.** Legitimate and representative existing bodies as well as new ones should be allowed to register an interest in land, e.g., community councils, community associations, local development trusts.

- **Membership.** We note that the minimum number of people required to be members of an acquiring community group has been reduced to 20. This is welcome. We would like to re-emphasise, however, that the minimum requirement of 20 still prohibits the involvement of partnerships or consortia where actual membership of the company can be small. For example, Eigg has only three members (the local community association, the Highland Council and the Scottish Wildlife Trust), Knoydart has seven. The minimum number of members should be three, if these comprise representative bodies or constituted organisations, and at least one of these should be a community organisation. The applicant body should have open membership, have community benefit as its primary objective, be non-profit distributing and be democratically controlled.

- **Definition of “community”.** The use of polling districts is not appropriate in many rural situations. Communities should be allowed to define themselves and applications to Ministers should require the endorsement of the local authority, local enterprise company or local economic forum. The “building blocks” for defining communities could be postcode areas.

Part 3 - Crofting Community Right to Buy

- **Purchase of additional land.** While we welcome the inclusion of this component, we remain to be convinced that there should be a size restriction. The Land Court should be able to decide on the purchase of additional land on a case by case basis.

We would be happy to provide further information to the Committee on any of the above points, or any details of the work which HIE has been involved with over the last four years. Further, we would like to suggest that the Committee, as part of its fact finding stage, should visit the Highlands & Islands, preferably to see one of the existing community land owners in practice, e.g., the Isle of Eigg Heritage Trust. We now understand that we have been invited to give evidence to the Rural Development Committee on 15 January and that our Chairman has been invited, in an individual capacity, to give evidence to the Justice 2 Committee, on a date and location to be decided.

We look forward to following the progress of the Bill through the Scottish Parliament, contributing to the debate where appropriate, and assisting with its implementation once enacted. We believe that this piece of legislation has substantial potential to assist in the sustainable development of rural communities.

S Cumming
Chief Executive