RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

4th Meeting, 2010 (Session 3)

Tuesday 23 February 2010

The Committee will meet at 1.30 pm in Weigh Inn Hotel, Thurso, Caithness.

1. **Crofting Reform (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Alistair Maciver, Crofter, Rogart;
   
   John MacKenzie, Crofter, Assynt;
   
   Nickie May, Crofter, Orkney;
   
   Jim McPherson, Crofter, Caithness;
   
   Councillor Jim McGillivray, Highland Council;
   
   Iain Maciver, Estate Factor, The Stornoway Trust;

   and then from—

   Drew Ratter, Convener - Commissioner Northern Isles and Caithness, and Nick Reiter, Chief Executive, Crofters Commission.

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The papers for this meeting are as follows—

**Agenda Item 1**

SPICe briefing paper (private)  
RAE/S3/10/4/1

Submissions pack  
RAE/S3/10/4/2

**For Information**

Recent Developments  
RAE/S3/10/4/3
The following written submissions have been received by those giving evidence to the Committee:

ALISTAIR MACIVER .................................................................2
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The following supplementary written submission has been received since the Committee's meeting on 10 February:

SIR CRISPIN AGNEW OF LOCHNAW BT QC ........................17
The question of a land register is perhaps one of the most controversial and expensive of all the proposals in the new Bill and it would appear that the most time consuming method available has been selected, and the estimate of several generations to complete this exercise will most likely be conservative in the extreme. We appreciate that a Register must be accurate and accepted by all parties involved but there are at least two workable methods which would achieve the required result in a much shorter time frame and, more importantly, would be readily accepted by the majority of crofters. It would also have the very important objective of avoiding all but the most obstinate cases reaching the Scottish Land Court.

The Draft Bill proposes that both the Crofting Commission and Registers Scotland would require to maintain identical records of every croft until the process is complete, resulting in a doubling of the cost, surely this is absolute lunacy. If the crofting Commission is to be responsible for the regulation of crofting - and I think it should be - is required to record all changes to the current register to bring it up to date and maintain it thereafter, there is no requirement for Registers Scotland involvement in the process!

Before proceeding to look at the controversial parts of the Bill, may I suggest that the following minor but very important changes might be made to the 1993 Crofting (Consolidation) Act.

A legal requirement for every crofting landlord and crofter to inform the Crofting Commission of any change of tenancy or ownership within 28 days of the event would ensure that the Crofting Commission were aware of such changes and would take steps to update the register. Currently the Crofting Commission have no power to enforce this requirement, indeed there are a number of instances in current legislation where the word “may” is used leaving an option to do nothing and it would appear that this route has been used in the past. A simple substitution of “shall” for “may” would close this loophole.

It is accepted that regardless of the method used to establish the register there will be a percentage of cases which will require SLC intervention but we would suggest that the method proposed in the Draft Bill would result in a very high proportion going down this route.

I have already made clear my reservations on two particular sections of the Bill and I will attempt to suggest two possible alternative methods to establish a new Crofting Register which need not involve Registers Scotland in any way and I will go on to suggest that the previous Crofter Housing Grant and Loan Scheme be reinstated for a number of reasons.
METHOD 1
A letter from the Crofting Commission to every registered crofter explaining the need for the register and setting out the following questions with a time limit for replies.

a) Has your boundary with your neighbouring crofter been accepted for at least twenty years unchallenged
b) If yes, are you prepared to accept this as your legal boundary
c) If no, do you have an IAACS map which sets out the boundary of your croft.
d) If you have an IAACS map would you be prepared to accept this as your legal boundary.
e) If you tenant or own a croft with no neighbouring crofter would you accept your current boundary as legal.
f) If no, would you be prepared to discuss differences with your neighbouring crofter in the presence of one or more independent mediators, for example, Grazings Clerks/Chairmen, Local Assessor or Crofting Commission Officer.
g) **If you are unwilling to accept any of the above courses of action are you prepared to seek a decision from the Scottish Land Court which might involve possible legal representation and Land Court costs which could prove costly.**
h) A prominent notice in all local newspapers circulating in the Crofting Areas, following the expiry of the above time limit, with a request for any crofter not having had notification of the above requirements to contact the CC within a specified time limit.

METHOD 2
An alternative method would be for the Crofters Commission to seek assistance from the current Grazings Committees/Grazings Constables (or in the absence of the foregoing, Community Councils or local Community organisations) to establish agreed boundaries between individual crofters as set out in IAACS maps. This could be used to obtain agreement where problems occur, in the more contentious situations it might be necessary to involve a professional mediator to reach agreement.

A further point is that a substantial number of crofts have already been purchased and they will already be accurately mapped with acceptable boundary lines confirmed.

It must be accepted that, human nature being what it is, there will always be some disagreement but if crofters are credited with a degree of common sense they will respond positively to any attempt to involve them in discussions which will result in agreements reached by them, it will also be more acceptable if it involves minimal cost.

**It would require some financial recompense to those involved in these discussions for the time involved but this would be minimal compared to the system proposed by the present legislation.**
CROFTER HOUSING GRANT SCHEME
It is a well substantiated fact that the previous Crofter Housing Grant and Loan Scheme was the most cost effective and efficient means of supporting housing provision in rural areas yet that scheme was last updated in 1989 and has since been superseded by a three tier grant scheme with no loan element. The CHGLS scheme in 1989 has been reliably estimated to provide 87% of the cost of a modest three bedroom house, current estimates are that the present rate is 14%.

A further point which seems to have been quietly overlooked is that the loan element of the previous scheme was repayable with a provision for Scottish Government to deduct arrears of repayment from support payments and the loan element was actually self financing if loan repayments were attributed to the CHGLS rather than a general tax account.

CHGLS provided the most secure and affordable means by which a crofting family could build a house on the croft and allowed them to budget for the fixed repayments.

It also allowed a new entrant to set up home on the croft at a reasonable cost and live on the croft.

Comments from eminent individuals with a much greater knowledge of crofting history than mine have highlighted the fallacy of adding more and more legislation to the already complicated structure in place, which, rather than improving the situation, has in the majority of cases, made it worse. The majority of crofters could well be forgiven for thinking that successive administrations, with the help of Governments – of all political persuasions – were intent on getting rid of crofting completely.

Support for the argument that there is a desire to dispense with the crofting system and its complicated structure comes from a different but related situation, which, although not within the scope of your Committee's investigation, does have a major bearing on the wider situation and is worth stating at this point. A study of the various support schemes available to crofting over the years following World War two up to the present time will best illustrate the point I make.

It has also been pointed out that no matter how much legislation is produced unless crofting makes a return on money – and perhaps more importantly – time invested, crofting activity will continue to decline.

In conclusion can I ask that you seriously consider the points which I have made, not only as an individual but on behalf of crofters in all parts of the crofting area, the effect on crofting of giving your approval to the proposals to –

a) charge individual crofters for setting up a register by the most cumbersome, expensive and time consuming method possible which the body set up in 1955 was required to do but failed dismally over a period of some fifty plus years to achieve and –
b) to refuse all requests to reintroduce the Crofting Housing Grant and Loan Scheme at realistic rates.

Alistair Maciver
16th February 2010

SUBMISSION FROM JOHN MACKENZIE

Crofting Reform (Scotland) Bill.

Background information.
It may be helpful for members of your Committee if I firstly give some background information concerning my status and personal interest in the current process of amendment to the draft Bill. Although having been born in Glasgow and having returned there in my early teenage years, I have all my life had a close involvement with this community. The tenancy of my principal croft passed to me by inheritance in succession from my great-grandfather, my grandmother and my mother. I vividly remember the days when it was essential for the survival of my forebears that the croft was carefully husbanded. Oats, potatoes and turnips were grown to sustain the family and their stock. Because part of the land sloped down to the sea, my grandfather would annually carry on his back in a creel the soil from the final drill to the top of the croft to compensate for soil drift due to the effects of cultivation. Each crofter had allocated to him a strip of the foreshore from whence to harvest ware to act as fertiliser for the soil and this was carried onto the land in creels on their backs. That level of labour was essential for survival in these days. My croft is made up of small areas of potentially arable land, which is extensively littered by clearance cairns. These bear testimony to the toil and sweat involved in turning the bare rocky land to which my predecessors were cleared into land capable of just about supporting a family. The economic implications for the human population of our crofting communities in those days are now hopefully gone for ever. Yet it seems that the vision of those who are apparently driving forward the current legislation is an attempt to have crofters return to such circumstances. Perhaps I may be forgiven, on that basis, for having suggested in my earlier letter in this connection dated 11 August 2009 that it appears to some of us who have a emotional link with the land of our fathers that those who are apparently driving forward the current proposals for reform of crofting have little empathy or sympathy with the history of crofting. Sadly it appears that this attitude even extends to some in our own day having a significant public image who have written and commented extensively on that history but know nothing of the practical implications of the toil and frustrations of having to survive in the current agricultural economic climate.

My presence in this village is the direct result of my having succeeded through inheritance to the tenancy of our family croft. For a number of reasons I chose to settle on the croft earlier in life than had been originally intended and brought my wife and young family here over 30 years ago. In doing so I separated from my then business colleague, leaving behind a small
engineering business in which I had been the principal technical influence. That business continues to trade in central Scotland under a title that incorporates my name but with which I immediately ceased to have any involvement when I moved north. A significant thrust of the current proposals for reform of crofting legislation is to destroy the link that many of the successors of those who originally created these crofts have with the land of their fathers. Many of them are unable to take the kind of action that I chose at the time but still cherish the hope of being able to return in the future. A significant number of those who are absentee were forced by generations of economic hardship to seek gainful employment elsewhere or left the place of their birth to advance their educational attainment. Had these proposals been in force thirty odd years ago I and others like me would have been unable to contribute our energy and experience to our communities. In my case, apart from my own business activities having over the years generated employment opportunities for around a dozen people, I was one of those who led the original historic Assynt buyout of our crofting land. I think that it is reasonable to assert that in addition to possible qualities of leadership, my main contribution to that was the business knowledge gained during years of experience elsewhere.

One might ask what is the ultimate aim of the current proposals? The Policy Memorandum document states *inter alia* that it is to “ensure that crofting continues to contribute to sustainable growth in some of Scotland’s most remote, rural communities.” This quite simply is economic nonsense in the current agricultural climate of oppressive regulation and diminishing returns for labour expended. Numerous examples can already be cited throughout our communities of crofts having passed into the hands of incomers without any tangible economic output being evident. I readily accept the desirability of addressing neglect if that can be shown to exist. Today the principal agricultural use both for inbye land and outrun is for grazing stock. If the land is fenced and drained and is free of rashes and bracken it cannot be regarded as neglected. I submit therefore that most of our crofting land, whether in the hands of absentee or locals are being managed by the resident shareholders in a manner that is consonant with the current economic climate. What is really needed is a genuine economic development strategy for our remote communities, something that government and the development agencies have failed to generate over recent decades. The appropriate way forward is to ensure that absentee who are the successors by inheritance of those who created these crofts in the first place reach a formal agreement with local shareholders in terms of managed grazing and other use of inbye land. It may also be appropriate to create a mechanism whereby grazings shares currently in the hands of such absentee are transferred to resident shareholders. Such a mechanism would also require some provision for reversing this in the event that the absentee is able to return.

**Adjustments to date to original proposals**

- I am thankful that the proposed Area Committees have been abandoned and that the network of community assessors is being retained. I am yet to be convinced of the appropriate mechanism for election of crofting representatives to the Commission.
I remain unconvinced of the need for a new Crofting Register. The existing flawed Register should be updated by the Commission without cost to crofters.

I am very thankful that the proposal to use a croft tenancy as security against commercial lending has been dropped.

Removal of the occupancy requirement as a supposed means of addressing speculation on croft land is welcomed. I am content with the proposed strengthening of the powers of the Commission in this connection. I will continue to insist that the Commission proceeds with sensitivity and caution where it is proposed that the successors by inheritance of croft land be dispossessed.

Insensitive application of the 16km rule in the above circumstances is not appropriate and a suitable mechanism for dealing with this needs to be found. On the other hand, instances can be cited where incomers have gained croft tenancies on the basis of ambitious statements of development intent which have never, and will never materialise and such people have moved to another location still within the 16km radius. In contrast to the circumstances affecting absentee who are inheritors by succession, this cannot be just.

In general I am content with owner occupiers being treated equally with tenants in terms of the proposals, subject to the other concerns noted.

Comments on remaining proposals.
1. In general terms I am content with the proposed changes to the structure of the Commission. In particular I welcome the proposed elected structure but await with interest further details of the mechanism for this process.
2. I continue to regard the proposed new Register of Crofts as unwelcome and unnecessary. I would commend a rethinking of this proposal that would involve an updating of the current Register. Although the current IACS mapping system is still in some disarray this could be used as the basis for a modified map based system for the current Register.
3. There needs to be a much more sensitive approach to the proposed duties of crofters and owner-occupiers. The proposals in regard to supposed absentee is not nearly sensitive enough to meet the needs of those who are tenants or owner-occupiers by inheritance. In such circumstances a formally regulated sub-let arrangement, reviewed at suitable intervals, should be considered. This would ensure productive use of the land by resident local crofters without the irrevocable penalty of dispossession. The provisions in item 58 of the Policy Memorandum needs to be amended in a sensitive way to take account of this. There also needs to be a much more realistic application of the 16km rule in such circumstances. The Commission’s recent letters to absentee falling into the category that are my concern are far to insensitive in this connection. The provisions envisaged in items 61 and 62 fail to adequately take account of the grazing pattern of today’s agricultural climate. The suggestion that absenteeism equates with neglect is most certainly not necessarily the case. There are undoubtedly instances of neglect of fences and drainage on the part of those who are resident.
4. While it is indeed true that there have been a number of cases of commercial speculation on croft land that need to be addressed in terms of
legislation the fact is that many active crofters have been able to engage in other commercial ventures that have been funded in this way. It is therefore felt that the proposed legislation is unjustifiably prescriptive. It is therefore imperative that where the Commission receives a decrofting application from a resident crofter that this is treated in a much more sensitive manner than an application from an absentee.

Conclusion.
While I welcome the amendments already proposed to the draft Bill, I am not convinced that the current provisions properly address the declared policy agenda of regeneration of crofting. The focus is in the wrong direction and should be on economic regeneration of our communities. Crofting would inevitably flourish in such an environment. Personally I still feel that the Bill should be scrapped because its agenda will not be achieved by its current provisions.

John MacKenzie
3 February 2010

SUBMISSION FROM JIM MCPHERSON

I would like to introduce my submission with 2 quotes:

When asked to explain the success of his designs an early pioneer of aviation said:
“I simplicate and add more lightness”

An aside by a legal professional at a meeting I attended to consider this Bill:
“I view this legislation as my pension”

Please bear in mind both quotations in your consideration of this Bill.

Only PART 2 of the Bill, THE CROFTING REGISTER, will apply to all crofts at some time.

The only indication of the cost of placing a croft on the CROFTING REGISTER so far is the suggestion that the fee payable to the Registers of Scotland will be £80. This will apply to all crofts. 

With about 18,000 registered crofts this will remove about £1.4 million from crofting.

An owner occupier will have a registered title and, particularly if the title is on the Land Register then the map and bounding description of the croft will be readily available. The owner occupier will submit the map and title sheet to the Crofters Commission along with the fee payable to Registers of Scotland and, having checked the information contained in the application, the Crofters Commission then pass the information to be entered in the CROFTING REGISTER.
A crofter registering a croft will have to provide a map to a standard acceptable to the Keeper at a ball park figure of £200. A ball park figure for employing a surveyor is £600.

Even if the figure of £600 applies to only half of tenanted crofts, there would be about £7 million removed from crofting.

The advantage of employing a surveyor is that the boundaries would be determined as such and not with reference to such things as management fences.

It is accepted that the Register of Crofts held by the Crofters Commission is neither accurate, current or map based.

By what criteria will the Crofters Commission assess an application?

In particular can the Crofters Commission, by approving a map submitted by a crofter, be seen to be determining the boundaries of a croft, a jurisdiction reserved to the Land Court.

In the interests of efficiency the Crofters Commission and Registers of Scotland should operate a system comparable to the Automated Registration of Title to Land. Solicitors using eRegistration will not be working for free

There is no mention of the level of fee the Crofters Commission will charge to progress an Application.

I would urge the Committee to pin down the costs, particularly to a crofter, of entering a croft on the CROFTING REGISTER and consider this against the benefit to that crofter.

Bear in mind that a croft being worked by a family whose forebears broke in the ground with backache, heartache and a spade – the ground not being fit for a plough – will be well aware of the croft boundary.

Not in the Bill

1 Schedule 2 of the Crofters (Scotland) Act 1993 – the Statutory Conditions

10 The crofter shall not do any act whereby he becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985.

Such a condition has been incorporated into the Crofting Acts since 1886. It is no longer equitable in the present day when it is possible to be discharged from bankruptcy in one year - though payments may continue for three years - that a landlord has an absolute right to remove a crofter under Statutory Condition paragraph 10.

There may have been an argument in the past that such a condition was necessary to protect the landlord’s interest as far as the payment
of rent and the cultivation of the croft was required since the crofter could not trade as a bankrupt. In the present day so long as the rent is paid and the croft is cultivated or put to other purposeful use then this condition is not required to protect the landlord’s interest.

If the condition was deleted it would not affect the actions of the crofter’s trustee in bankruptcy.

2 Following on MacDonald v West Minch Salmon Limited and Another it became necessary to introduce a test of reasonableness into the Statutory Conditions –paragraph 11A.

11A Nothing in paragraph 11 above shall be held to allow, or require the crofter to allow, the landlord, or any person authorised by the landlord, to exercise unreasonably a right enjoyed by virtue of that paragraph.

This test of reasonableness is specifically only applied to Statutory Condition paragraph 11.

Bearing in mind the second quotation above it should be put beyond doubt in the Bill that a test of reasonableness be applied also to landlords and neighbouring crofters enforcing a written condition under Statutory Condition 9.

9 The crofter shall not violate any written condition signed by him for the protection of the interest of the landlord or of neighbouring crofters which is legally applicable to the croft and which the Land Court shall find to be reasonable.

While the Land Court has found the written condition to be reasonable, it is the exercise of the written condition which should be made subject to the test of reasonableness – or put it another way – our learned friend of the second quotation will be earning his pension by arguing that because paragraph 11A is restricted to paragraph 11 then it was clearly the will of Parliament that there should be no test of reasonableness when a landlord or neighbouring crofters enforce a written condition under Statutory Condition paragraph 9.

James McPherson

SUBMISSION FROM THE STORNOWAY TRUST

In its present form the Stornoway Trust welcomes;

- The provisions made to address misuse and neglect of croft land
- the discretionary powers to be given to the Commission to deal with absentees. It should be noted that less than 3% of the Trust's 1300
croft tenants are classed as long-term absentees, many of whom allow active crofters the use of their holdings.

- The removal of the standard security provisions from the Bill
- That possession of planning consent will no longer be regarded as a material consideration in the decrofting process.
- The omission of the Area Committee's proposals from the Bill
- The attention given to owner-occupiers, and the measures proposed to bring owner-occupancy into line with crofting tenure.
- The reduction in registration costs should the requirement to register become a legal obligation
- The Government's commitment to meet the costs of registering common grazings
- The introduction of a 10-year "clawback" period.

**The Stornoway Trust Is Disappointed That The Bill Does Not Appear To:**

- Give the Crofting Commission a crofting development remit
- Remove pressure for decrofting through improved financial provision for crofter housing support
- Address the need to improve the effectiveness of the local assessor system
- Address the recognised abuse of the nominee purchase provision of the 1976 Act to circumvent the Commission's tenancy transfer procedures
- Recognise the existence of well maintained existing registers of tenancy information
- Remain silent on measures which would reward and encourage productive use of croft land.
- Identify failure to maintain croft land in a state which does not adversely impact on neighbouring interests as an example of abuse and neglect.
- Extend the 16km residency requirement to a more practical distance (eg 60km)
The Stornoway Trust Has Concerns Over:

- The proposed changes to the status and restricted functions of the Crofting Commission
- The legal implications of the proposed change
- The implication loss of immunity may have on attracting future Commissioners and their perceived objectivity should they have to function under external and budgetary pressures
- The uncertainty over the geographic makeup of the Commission
- The serious implication on crofting and the proposed Commission if the legislation and remit of the Commission fail to attract suitable candidates.
- The uncertainty over how entitlement to vote for Commissioners will be determined. The Trust firmly supports the view that all registered tenants carried over from the existing Crofters Commission’s register and updated thereafter should be deemed eligible to vote.
- The proposed trigger points for registration. The argument that the registration process may avoid future disputes does not seem to acknowledge the likelihood that the proposal will instigate many cases of unnecessary and avoidable strife along the way.
- The proposed first come first serve ranking
- Crofters being disadvantaged if they experience problems and delays in achieving registration.

LETTER FROM THE CROFTERS COMMISSION 27 JANUARY 2010

EVIDENCE FROM THE CROFTERS COMMISSION REGARDING THE REGISTER OF CROFTS

I write to you as I feel it is necessary to correct certain statements which have become part of the evidence you have received in your inquiry into the current Crofting Bill. Regrettably, some quite inaccurate impressions have gained currency over the years, and I feel it is my duty to correct these, where I am able, in justice to Commissioners and Crofters Commission staff past and present

Here, I would wish to rebut recent criticisms of the Commission by, in particular, Professor James Hunter in regard to the alleged failure to compile and maintain the Register of Crofts so that it would include not only the extent of crofts registered in it but also include or show the boundaries of these crofts.
by reference to plans (apparently to a standard akin to that for the proposed new Crofting Register). My reasons can be summarised as follows: --

- The first Register was compiled by the Commission in accordance with the duty imposed by section 15 of the 1955 Act. The Register was to be compiled and from time to time revised in a form approved by the Secretary of State. There was no requirement to compile or maintain a map-based Register.

- The Commission have a continuing duty under the 1993 Act, as amended, to compile and maintain the Register.

- There was no existing Register of Smallholdings in Scotland when the Commission began the compilation of the Register.

- The information that the Commission could require the owner or the occupier to provide for the purpose of compiling the first Register was restricted to the acreage, the rent and the tenure of the holding and such other matters relating to the ownership or the occupation of the holding as the Commission reasonably required for the execution of their functions under the Act. Essentially, the information about the extent of any croft recorded in the Register is only as good as the information originally provided by the owners or occupiers on whom notices were served by the Commission.

- Although the status of any registered croft may now be immune from challenge, the extent and boundaries of any registered croft can still be challenged and any continuing dispute can only be resolved by the Scottish Land Court, not the Commission.

- That Register of Crofts was "never intended to be anything more than a piece of administrative machinery". It is not map based and the Commission could not require the production of maps for the purposes of its administration of the crofting system or for any other purpose.

- Until the 1993 Act was amended by 2007 Act, anyone who requested an extract of any entry in the Register had to be a person who, in the opinion of the Commission, had good reason for doing so. It is only recently that the information now contained in the Register has been freely accessible to the public.

- The Commission have, to the best of my knowledge, diligently recorded or amended the Register by inserting new entries or changing or omitting existing entries in accordance with notifications received from the Land Court, landlords and other competent informants. They have, of course, also noted all changes effected by their own orders or directions (for example, apportionment orders or decofting directions).

- The Commission have compiled a computerised mapping system showing all areas of apportioned common grazing and all areas for
which they have made decrofting directions (by reference to plans of
the areas to which these orders and directions relate).

- Although the Commission have, to the best my knowledge, diligently
recorded the extent of all parts of common grazings or crofts
authorised to be resumed by Final Orders of the Land Court as
intimated to us, these areas are not shown on the Commission's
mapping system. That is because any plans produced to or referred to
by the Court in its orders are not routinely copied to us by the Court.

- Unfortunately, parties to transactions involving croft land (to which the
consent of the Commission is not required by law) frequently neglect or
omit to notify us of changes in ownership. This is despite the legal
requirement to do so, breach of which renders the person acquiring
that land liable to summary prosecution. Also we are often not notified
of changes in residency on or off the croft. (Note that crofters and
owners are not legally required to tell us of changes in occupation or
residency, as opposed to changes in ownership, unless and until we
require them to do so). This has effectively inhibited our ability to
identify and deal effectively with, for example, absenteeism where that
is not otherwise brought to notice by the local crofting community.

- However, it has to be admitted that lack of available resources has
limited the Commission's ability to proactively review the currency or
accuracy of the information contained in the Register from time to
time. Nevertheless, I am confident that the Register is duly amended
whenever new information is provided and that the Register accurately
reflects that information.

I hope the above information will be useful to you in your continuing
considerations. If you require any information or have any questions or
requirements for clarification arising out of the above, in advance of your
imminent meeting, please let me know and I will do my best to oblige.

SUBMISSION FROM THE CROFTER COMMISSION 19 FEBRUARY 2010

The Committee will be aware that the Crofters Commission is statutorily
bound in its response to all regulatory applications, and has likewise a duty,
expressed in some detail, to carry out the many measures prescribed by the
various pieces of legislation which govern and regulate crofting.

As a policy overlay, and after considerable debate, lead by myself since I
became Chairman and later Convener, the Commissioners have agreed on
certain principals by which the organisation is guided in all its activity. It must
be recognised that these in no way fetters the discretion of the Commission,
or limits its carrying out of its statutory duties.

Along with other Commissioners, I believe, however, that unless crofting is
achieving something which is in the public interest, regulating it makes little
sense; a nuisance to those regulated, an expense to the public purse, and
without a defined outcome to justify that expense. I set aside issues of support
for crofting at this time, as that is a very big debate, which I do not wish to
engage in here.

The three principals which the Crofters Commission strives to incorporate into
all decisions are as follows. The promotion of:

- Occupancy
- Productive Use
- Shared Management / Co-operation

I continue to believe that, with its regulation guided by these principals,
crofting can make a contribution to 21st century Scotland. This contribution
can be measured in a number of ways, through analysis of sustainable
communities, local food production, environmental benefits. Crofting further
supports public services in fragile communities, and creates an available and
flexible work force for a 21st century economy.

Guided by these principals, the Commission has, over the past period
instigated and executed what I consider to be a series of coherent policy
initiatives. I will set them out briefly below

- New Occupancy initiative underway. With the support of the Minister
  for the Environment, we are now underway on the first systematic
  programme of action on absenteeism since the Absentee Rolling
  Programme was suspended in 2006. Initial letters to all absentees of
  more than 10 years standing have been sent out, staff resources have
  been identified and trained, and responses are now flooding in.
  Resources are mainly staff; redeployed development and grants staff
  who now form the Strengthening Crofting team and a significantly
  strengthened Legal Team

- Current major review of processes and procedures. The 2007 Crofting
  Act was conceived as an act which would streamline regulation and
  increase efficiency. The Commission introduced the new legislation
  efficiently, a considerable task, and is now in the process of a very
  significant review of processes and procedures to bring ourselves into
  line with the administrative requirements of the new legislation. Anyone
  with experience of a bureaucratic organisation dealing with complex
  matters will recognise the scale of the challenge

- Area Commissioner role reinstated. I was opposed to the breaking of
  the link with crofters and crofting communities which was required
during the period from 2002-2007, but that was the corporate decision.
My first move as Chairman, was to propose to the board the
reintroduction of the Area Commissioner role, with two Commissioners,
though we are currently short of a member, covering four areas. This
has been an organisationally valuable, and popular development. I
would wish to stress that I consider the current board of commissioners
to be excellent
• Major re-engagement with Assessors (including an informal election/nomination system in conjunction with SCF). I espoused the view that most public organisations would give their eye teeth for an expert volunteer network, such as crofting assessors. Commissioners agreed, and consequently, we have revitalised and trained the assessors, with great success. Further we have achieved a considerable improvement in both the age and gender balance. This has required a great deal of work by both Commissioners and staff

• Active consultations with Local Authorities on the new Planning Key Agency role and better coordination of planning and regulatory applications. As a local authority member of long standing, I personally commenced a programme of visits to local authorities, with especial emphasis on their planning chairs and departments. I do not believe that crofting and housing demand can be reconciled other than through constructive relationships with planners and intelligent engagement with planners and planning legislation and consultation. The new statutory role of Key Agency granted to the Commission by the new Planning legislation should play a significant role here, but it is, as yet, not well defined

• The Commission is about to make RoC available online. I previously wrote to the RAEC on the subject of the Crofting Register, so will not rehearse my views on that, but would wish to let the committee know that we will soon have the Register of Crofts, as a working and amendable document, available online. Failure to receive information is a significant problem in maintaining the register, and it is hoped that this will assist in eliciting updates to the Register.

It should be noted that at least two of the above changes have been informed by the outcomes of the Shucksmith inquiry: that the Crofters Commission should effectively be a pure regulator and tribunal, and that absenteeism should be tackled strongly, as the prime concern found among crofters by that inquiry.

As a general and coherent set of changes and developments for the organisation, I am content that all of them, taken as a whole, have strengthened the Crofters Commission and made it more fit for purpose in the 21st Century.

I should also say that, whatever system of choosing Commissioners should be chosen in the future, I consider the current board, recruited through interview under Nolan principals, to be excellent. Each one has taken his and her duties seriously, and is consistently supportive and loyal to myself, as Convenor, and each is sensitive and supportive in his or her regulatory decision making work with staff and the public. It is also worth remarking that currently there is only one Commissioner who is not a crofter, and he is a small Highland farmer.
SUPPLEMENTARY WRITTEN EVIDENCE FROM SIR CRISPIN AGNEW OF LOCHNAW BT QC

OBLIGATION TO RESIDE WITHIN 16 KILOMETRES OF CROFT

16 kilometre rule

I was wrong in giving evidence in saying that the 10 mile or 16 kilometre rule was introduced by the Small Landholders (Scotland) Act 1911.

I would like to correct the evidence that I gave to the Committee on 10 February 2010 regarding the origins of the 16 kilometre rule, which appears in section 22(1) of the Crofters (Scotland) Act 1993. This section provides:

22.— Absentee crofters.
(1) If the Commission determine in relation to a croft—
(a) that the crofter is not ordinarily resident on, or within 16 kilometres of, the croft; and
(b) that it is in the general interest of the crofting community in the district in which the croft is situated that the tenancy of the crofter should be terminated and the croft let to some other person or persons;

then, subject to the provisions of this section, they shall have power to make an order terminating the tenancy of the crofter and requiring him to give up his occupation of the croft at a term of Whitsunday or Martinmas not earlier than 3 months after the making of such order.

History

Section 2 of Small Landholdings (Scotland) Act 1911 provided that certain holdings, additional to crofts under the Crofters Holdings (Scotland) Act 1886, were to come under the 1911 Act, provided that the tenant resided “on or within two miles of the holding”. The case law determined that the two miles was measured in a straight line and was not the distance by road.

In Rogerson v Viscount Chilston 1917 SC 453, the Court of Session determined that the two mile obligation only applied at the commencement of the Act to determine whether or not the holding came under the 1911 Act, but that it was not a continuing obligation upon the tenant of a landholding, as crofts were called under the 1911 Act, that they should continue to reside on the holding or within two miles of it. This was notwithstanding the fact that it was a continuing obligation under the Crofters Holdings (Scotland) Act 1886 that a crofter continued to reside on his croft. This is the case referred to by Professor Hunter in his evidence to the Committee.

There were no absentee provisions in the 1911 Act.
The 10 mile rule was initially introduced by the Crofters (Scotland) Act 1955, which provided for an absentee provision in crofting legislation and was similar to section 22 of the 1993 Act, allowing the dispossessed absentee crofter to buy his house. It was introduced as a two mile rule.

The Taylor Report, which was the foundation for the 1955 Act, recommended that the Crofters Commission should have the discretion to terminate the tenancy of a crofter who was not ordinarily resident on or within two miles of his croft—see Report in Glasgow Herald at http://tinyurl.com/yeeop29.

The two mile rule introduced by the 1955 Act was amended to 10 miles by section 7 of the Crofters (Scotland) Act 1961. The Report on the 1961 Bill said of this amendment:

"Subsection (1) amends Section 17(1) of the Act of 1955 and increases from 2 to 10 miles the distance at which a crofter may live away from his croft without being regarded as an absentee crofter. Section 17 gives the Commission power to terminate the tenancies of absentee crofters.

Subsection (2) provides that absentee crofters dispossessed on the order of the Crofters Commission, acting under Section 17(1) shall have the right to obtain a conveyance in feu of the croft house and garden and rights of access, provided only that the dwellinghouse has been provided in whole or in greater part by the crofter or by his predecessors.

The Taylor Commission, which discussed the absentee problem at some length (see paras. 55-59 and 121-128. of their Report), recommended that absentee crofters should have absolute entitlement to obtain a conveyance in feu of the dwellinghouse on the croft, saying that "the rest of the land of the absentee’s holding should be made available for enlarging the other holdings in the township ... In this way the agricultural interests of the township would be promoted."

The 10 miles was changed to 16 kilometres by metrification.

Sir Crispin Agnew of Lochnaw Bt QC
10 February 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Subordinate Legislation

The Minister for Transport, Infrastructure and Climate Change has written to the Local Government Committee providing details of a negative instrument which will be laid shortly entitled the Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010. The instrument proposes to amend the prescribed date to allow time to review planning permission for the operation of fish farm developments from 1st April 2010 to 31st March 2013. A copy of the letter is in the Annexe.

Wildlife and Natural Environment Bill

The Scottish Government has published the responses submitted to its recent consultation on the draft Wildlife and Natural Environment Bill. Responses can be read online at:

http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/WildNatEnvBill/ConsultationResponses

Brussels Bulletin

The monthly Brussels Bulletin produced by the Parliament’s European Officer is available online at:

ANNEXE

CORRESPONDENCE FROM THE MINISTER FOR TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE TO THE CONVENER OF THE LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

The Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010

I am writing to inform you in advance of a statutory instrument I am proposing to lay shortly in the Scottish Parliament, which will be subject to the negative resolution procedure.

On 1 April 2007, responsibility for new marine fish farm developments and modifications to existing developments was transferred to planning authorities by the Planning etc (Scotland) Act 2006. Prior to this, the responsibility for issuing consents for developments on the West coast of Scotland and the Western Isles rested with the Crown Estate, while responsibility for issuing licences for such developments in Orkney and Shetland rested with the respective Councils under local Acts. Such consents or work licences were granted for 15 years.

One of the reasons for transferring responsibility to planning authorities was to enable permanent planning permission to be available for such developments. It was considered that, because of the fragile nature of the industry, which operates in rural and remote areas, it was important to provide permanent planning permission to boost investor confidence.

At the same time as this transfer, it was decided that Scottish Ministers would undertake a review or audit of all existing marine fish farm developments to determine whether permanent planning permission should be granted for these developments. Whether it was a "review" or an "audit" depends on what environmental assessment has already been undertaken. The assessment is principally to ensure that these farms are not having a significant impact on the environment or affecting a designated site or protected species. At the time the transfer of responsibility took place, there were 917 farms with existing consents or works licences. Because of the number of farms, each farm is to be assessed according to the expiry date of the existing consent or works licence, although we are attempting to reduce the overall timescale if we can. Following changes made by the Planning etc (Scotland) Act 2006, the operation of an existing marine fish farm – i.e. a fish farm in place before 1 April 2007 - requires planning permission after the 'appropriate date'.

The Act states that the appropriate date is whichever is the later of:

- A date prescribed by Scottish Ministers, and
The date on which any consent or works licence which relates to the operation of a farm ceases to have effect

This date will be different for different fish farms as it is essentially the date on which the existing consent for a fish farm expires. The date prescribed by Ministers is currently 1 April 2010.

The purpose of the prescribed date is to allow time to review farms where the authorisation has already lapsed. An initial time period, from 1 April 2007-31 March 2010, was set by the current statutory instrument to enable Scottish Ministers to build those farms where the authorisations were expiring during that period into the forward programme without those farms being in breach of planning law.

The information to enable Scottish Ministers to undertake the reviews or audits has come from the Crown Estate and other sources. This information was not in a readily transferable format and work has had to be undertaken to address this and to establish the veracity of the information. This has taken some time to do. Consequently, while we have been able to review or audit a number of farms, the condition of the information has had an impact on dealing with authorisations that have expired over that period. Of the 330 farms where consents will have expired between 1 April 2007 and 31 March 2010, 227 have still to be assessed. An extension to the prescribed date is therefore needed to allow further time to review or audit those farms. It is estimated that a further three years will be sufficient.

I attach a copy of the proposed amending Regulations for your information.

STEWART STEVENSON, MINISTER FOR TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE

10 February 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the date prescribed in the Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007 for the purposes of section 26AA(2) of the Town and Country Planning (Scotland) Act 1997 ("the Act"). The prescribed date is changed from 1st April 2010 to 31st March 2013. The effect is that 31st March 2013 is, in the absence of a prior grant or refusal of planning permission under section 31A of the Act, the earliest date on which planning permission would be required for the operation of a marine fish farm using equipment in place on or before the date on which section 3(1)(c) comes into force (1st April 2007).
2010 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010

Made - - - - 2010
Laid before the Scottish Parliament - 2010
Coming into force - - 31st March 2010

The Scottish Ministers, in exercise of the powers conferred by section 26AA(2)(a) of the Town and Country Planning (Scotland) Act 1997(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Prescribed Date) (Scotland) Amendment Regulations 2010 and come into force on 31st March 2010.

Amendment of the Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007

2.—(1) The Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007(2) are amended in accordance with paragraph (2).

(2) In regulation 2 (prescribed date) for “1st April 2010” substitute “31st March 2013”.

St Andrew’s House,
Edinburgh
2010

Authorised to sign by the Scottish Ministers

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(1) 1997 c.8; section 26AA was inserted by section 4(1) of the Planning etc. (Scotland) Act 2006 (asp 17).
"Prescribed" is defined by section 277(1).

(2) S.S.I. 2007/123.