RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

5th Meeting, 2010 (Session 3)

Tuesday 2 March 2010

The Committee will meet at 2.00 pm in Town Hall, Lerwick, Shetland.

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

   Jane Brown, Crofter, Member, Committee of Inquiry on Crofting;

   Peter Dodge, Crofter;

   Duncan Gray, Crofter, Area Assessor for the Crofters Commission;

   Norman Leask, Crofter, Parliamentary Spokesman, Scottish Crofting Federation;

   Jim Nicolson, Crofter, Area Assessor for the Crofters Commission;

   and then from—

   John Watt, Director of Strengthening Communities, Highlands and Islands Enterprise;

   Andrew Thin, Chair, Scottish Natural Heritage;

   Douglas Irvine, Business Development Manager, Economic Development Unit, and Alan Rolfe, Property Manager, Assets and Property Unit, Shetland Islands Council.
Peter McGrath
Clerk to the Rural Affairs and Environment Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
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The papers for this meeting are as follows—

**Agenda Item 1**

- SPICe briefing paper (private)  RAE/S3/10/5/1
- Submissions pack  RAE/S3/10/5/2
  
  *Finance Committee report on the Financial Memorandum of the Crofting Reform (Scotland) Bill*  RAE/S3/10/5/3

**For Information**

- Recent Developments  RAE/S3/10/5/4
The following written submissions have been received from those giving evidence to the Committee at the meeting on 2 March:

- NORMAN LEASK .................................................................2
- HIGHLANDS AND ISLANDS ENTERPRISE ...............................3
- SCOTTISH NATURAL HERITAGE .............................................7
- SHETLAND ISLANDS COUNCIL .............................................9

The following supplementary written submission has been received since the Committee’s meeting on 10 February:

- SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION ....12

The following supplementary written submission has been received since the Committee’s meeting on 23 February:

- JIM MCGILLIVRAY .....................................................................13

The following written submission has also been received in response to the committee call for views:

- CROFTERS’ RIGHTS EMERGENCY ACTION GROUP .....................13
- DAVID FORBES .........................................................................16
SUBMISSION FROM NORMAN LEASK, SHETLAND CROFTER

I believe the Crofting Commission should have a majority of elected crofters with one appointed representative of the landlords. The Chair should be from the committee and agreed by the committee.

The assessors should be strengthened, trained and be depended upon by the Crofting Commission for local advice. Although the tenant is more often than not the man in the partnership it is common for the wife to be the main crofter so the person to be able to be a commissioner or an assessor should be the person in the family most able to commit time to the responsibility. Those entitled to vote should be all crofting families with one vote per unit.

I believe that an up to date Croft register with agreed boundaries be mapped. I believe this can be done, in almost all cases, as community mapping using participatory methods with mediators involved where necessary. When faced with having to pay for their case to the Land Court most people will agree.

I believe that absenteeism in itself is not a real issue if the croft is being properly run by someone else until it becomes viable. I believe neglect is a much greater issue than absenteeism. A land management plan should be in place by all absenteeees. Neglect would in my opinion include creating ‘wilderness area’ unless this is advised by someone like the SAC and notified to and agreed by the Crofting Commission.

I believe that extending the period in which a crofter is obliged to give up 50% of value of land sold for development from 5 to 10 years will not affect true crofters, anyone buying land for development should be forced to consider what they are doing especially if the Whitbread loop hole is closed. I believe that the 50% obliged to be given up by the crofters should not be given to the landlord. It is more logical for this to be used as a fund to maybe develop a local young croft entrance scheme or maybe help for common grazings clerks.

I believe that any little field of hard won parts of crofts, that would be laughed at by farmers in Aberdeenshire, that were so important in the past should be protected at all costs. One way of doing this is to re-instate the grant to enable young people to build in the less valuable (outruns) of the croft. That grant was to help build roads, foundations, take power, phone and water to where it is not accessible.

I welcome that the Crofting Commission will not give automatic de-crofting even if planning permission has been granted. You will have to give some guidance so the land court will allow this to happen.

I believe that there has been a quiet campaign by officials to separate the croft, the apportionment and any common grazings entitlements to avoid granting full SFP and LFASS payments when the politicians agree we have not been treated correctly ie; when Hill Livestock Compensatory Allowance was changed to LFASS and also when LFASS was reviewed around 2004.
A sub committee should be set up to investigate apportionments, deemed crofts and common grazings. These findings to be incorporated in this Bill.

**Remember when deliberating and reporting on this Bill to always consider the PEOPLE and their importance in the periphery of Scotland.**

I hope this is of some interest to you.

Thank you.

Norman Leask

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**SUBMISSION FROM HIGHLANDS AND ISLANDS ENTERPRISE**

**Crofting Reform (Scotland) Bill**

HIE welcomes the opportunity to submit written comments on the Crofting Reform (Scotland) Bill to the Rural Affairs and Environment Committee. In introducing our comments, HIE would fully endorse the 5 key principles for crofting set out in the Government’s response to the Committee of Inquiry into Crofting (COIC):

1. Maintaining and increasing the area of land held in crofting tenure.
2. Ensuring that land held in crofting tenure is put to productive use.
3. Ensuring that housing in the crofting counties makes a full contribution to the local economy.
4. Giving more power to local people to determine their own futures.
5. Assisting young people and new entrants into crofting.

HIE believes crofting delivers benefits to Scottish society through helping to retain and grow population in remote communities and through active land management for economic, environmental and social purposes. We acknowledge that economic returns from agricultural production on crofts are often unlikely to provide full time employment, but can contribute substantially to successful occupational pluralism, and to sustaining individual livelihoods and rural communities.

**HIE’s role in crofting**

In response to one of the recommendations of the Shucksmith report, the Scottish Government separated the development and regulatory functions undertaken by the Crofting Commission and transferred the former to HIE. It is important to stress that HIE’s focus is on crofting community development and not support to individual crofters. HIE is encouraging crofting community development by integrating it into its programme for whole community development in its fragile areas. This approach involves assisting communities to evaluate their local assets, identify their needs,
create local plans for growth and development and engage with public agencies through the Community Planning process. Crofting is a key component in many of these communities and local community plans will incorporate initiatives and ideas for crofting development. This will address issues such as housing, absenteeism, use of croft land, crofting infrastructure and will help inform the new Crofting Commission’s regulatory work.

In addition, HIE is supporting crofting sector development, through one to many initiatives such as capacity building, networking events, the SCF’s Crofting Resource Programme, which includes work with producer groups and on crofting community plans, and the Soil Association’s Crofting Connections project, linking to the curriculum for excellence introducing school children to crofting culture. HIE is also funding selected research on topics such as bull hire options, and trends on common grazings, which we hope will illuminate the carbon sequestration potential and offer strategies for their sustainable use. We are also actively responding to consultations of particular relevance to crofting.

At the same time, HIE, as the area’s economic and community development agency, is undertaking a wide range of other activities which tackle economic and social disadvantage and which complement our crofting development efforts, namely:

- Developing digital connectivity throughout the whole region.
- Enhancing the university sector, including the University of the Highlands & Islands.
- Building capacity in remote communities through support for businesses with growth potential, community account management and our Growth at the Edge/Fas aig an Oir approach, as outlined above.
- Exploiting the region’s unique renewable energy potential.
- Legacy delivery, until 2012, of the Croft Entrant Scheme.
- Undertaking research and information sharing on carbon capture, trading and management and its importance for crofting.
- Assisting communities to acquire and manage land and other property assets.

Specific comments on the Crofting Reform (Scotland) Bill, as introduced

Part 1 – Governance

The Bill enables the introduction of a largely elected Commission and the option for area committees, which HIE supported, has been dropped. However it is important that regional variations and working practices are accommodated within the new Commission. The assessors’ network has the potential to be a valuable tool for enhanced regulation, and for ensuring that decisions are appropriate at the local level. The new Crofting Commission should invest in developing assessor skills, transparency of arrangements, improved local accountability and knowledge of
changes in crofting law. This can be valuable in ensuring that crofting decisions will contribute to wider community benefit and be integrated into community planning objectives.

**Part 2 - Crofting Register**

HIE remains very supportive of the work to develop the new register. Indeed, the establishment of the register as quickly as possible is a prerequisite for delivery of many of the Bill’s objectives.

For example, the need to map and record all areas is a pre-requisite to applying to use Part 3 of the Land Reform Act. The task can be onerous, and an obstacle to the full implementation of the Land Reform legislation.

HIE believes that as part of its community account management programme, described above, or where a community owns a crofting estate, mapping of crofting areas could be undertaken by communities themselves. In its submission in response to the Draft Bill consultation, HIE suggested that there should be no registration fee, but, we recognise that this is not reflected in the Bill as presented to parliament. Notwithstanding, where there is a collective effort to map crofting areas, HIE suggest that registration fees should be waived. In addition, the actual mapping work could be funded through the Scotland Rural Development Programme (SRDP) under Rural Priorities.

Such a proactive, participatory and inclusive approach to local mapping, using established standards for community engagement, will deliver a cost effective, quick and robust register, facilitating further development and opportunity.

**Part 3 – Crofters’ Duties**

Strengthening of the Crofting Commission’s discretionary powers in relation to absentee cases is welcomed. Particularly important, is the Crofting Commission’s power to let an owner-occupied croft in breach of conditions, where the owner’s proposals are either not forthcoming, or not being realised.

HIE welcomes the Bill’s intention to deliver robust regulation on known absentee cases. In addition, HIE suggests that as the work of the Crofting Commission is strengthened, action is taken to identify crofts where abandonment and neglect are obvious, and address the neglect. This twin track approach will hopefully avoid the lengthy delays in addressing absenteeism, because neglect and misuse can be as corrosive in a community as absenteeism.

In granting new powers to the Crofting Commission, HIE recognises that the ethos of the Bill is very much towards establishment of a working relationship between anyone in breach of conditions and Commission staff. In pursuing the objectives listed in Section 26 of the Bill, defined time limits should be introduced for the Commission to settle issues related to residency, misuse or neglect and general undertakings.
HIE welcomes the new definition of an owner-occupier and believes this will equalise the treatment of owner-occupiers and tenants in law. In addition, the enhanced powers conferred on the Commission to deal with un-notified sub-division and onward sale should lead to better working arrangements between the Crofting Commission and Local Authorities, particularly in relation to planning law.

**Part 4 - Other Amendments**

HIE welcomes the intent to strengthen the Crofting Commission’s powers in protecting the spirit of the crofting Acts, especially in relation to the circumvention of crofting law by using planning law as a precedent.

Also welcomed is the intention to make it possible for the Crofting Commission to introduce conditions to its approval of any activity. This work is intended to simplify the Act. An outcome from this work could be the enhanced development potential and work of HIE in partnership with the Crofting Commission where any applicant will be aware that the conditions are mandatory and not guidelines.

Of particular note is the intention to deliver powers to both the Crofting Commission and the Scottish Land Court irrespective of planning precedent and hence make decisions based on crofting values set alongside community aspiration. This should assist Local Authorities to assess the importance of the public benefits of crofting in any particular area, and be complementary to planning law.

**Part 5- General Issues**

HIE welcomes the intent by Scottish Government to consolidate crofting law in the next Parliament. The ability within the Bill to make amendments by order is welcomed and HIE is ready to assist Ministers wherever possible.

The responsibility for small holdings mentioned in the Bill is welcomed and extends and ratifies the Crofting Commissions powers outwith the current crofting counties. HIE supports this policy arrangement.

**Closing comment**

Referring to the Scottish Government’s stated objectives following the COIC, it is noted that no reference is made within this Bill to the issues of support for crofter housing and young entrants to crofting. If, as expected, crofts become available via the current absentee initiative, then thought needs to be given as to how a young person can be assisted to enter crofting. Through account management with communities, HIE is offering assistance to communities who want to see crofts used. This will mainly be delivered by the local planning strategies mentioned above in relation to the Croft Register. In terms of funding new entrants, there is a requirement for a structured business approach tailored to their needs in order to release the potential of the new entrant and their community. HIE believes this should be achieved through alignment of SRDP development support.

Crofter housing development is an important part of local micro economic activity. Assistance with crofter housing has two benefits. Firstly, it gets people living as well
as working in the crofting community; and second, the actual building of houses has local economic impact. HIE believes that the current grant mechanism does not always focus on the primary target applicant, namely, economically active younger families, on average earnings, in housing need and rooted in their community. HIE also believes that consideration should be given to bringing forward proposals to strengthen and modernise the application of this extremely useful and universally valued support.

It is believed that the Scottish Government wishes to return to consolidate crofting legislation in the next parliament and HIE would take this opportunity to again state the importance of assistance to young entrants in both financial terms and the availability of crofts.

HIE remains committed to assisting Scottish Government achieve the Bill’s objectives and is willing to assist in any way throughout the Bill’s passage.

Highlands and Islands Enterprise
February 2010

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

The Scottish Parliament Rural Affairs and Environment Committee’s Crofting Reform (Scotland) Bill Inquiry: Written Evidence by Scottish Natural Heritage

General Principles

We welcome this opportunity to comment further on this Bill, which seeks to address the decline of crofting, the associated high levels of absenteeism and neglect, and the gradual erosion of land from crofting tenure. We strongly support these aims – and the wider objective of revitalising crofting.

Crofting is important in relation to the natural heritage for the following reasons (quoted from our evidence for the crofting inquiry):

- Crofting characteristically involves small-scale, non-intensive management of the land, which is generally beneficial for the natural heritage. It has kept people managing the land and has helped to sustain rural communities where social and economic forces would otherwise have undermined traditional land use systems and the way of life associated with them.

- Crofting has given rise to a very characteristic landscape pattern, reflecting its origins in the planned and relatively regular division of land between holdings in a series of discrete townships. The attractiveness of this landscape owes much to long-established or old (often abandoned) features and to former patterns of use.
• Crofting areas are important for many kinds of wildlife, reflected in the number/extent of designated sites, including Natura sites, Sites of Special Scientific Interest and National Scenic Areas. Much of this wildlife depends on non-intensive farming. Common grazing tenure has helped to maintain large areas of wildlife habitats (particularly machair, wetland and moorland) under sympathetic management.

• The crofting scene – both its physical manifestations and its cultural aspects – has great appeal to many people from a more urban environment. It speaks to them of a world in which man’s dependency on nature (and indeed on cooperation within the local human community) is more evident and in which the rhythm of life is dictated more than elsewhere by the weather, seasons and other natural forces. These experiential qualities mean that crofting itself contributes significantly to the visitor appeal of parts of Scotland that are remote and often difficult of access.

• The nature of crofting is nevertheless changing in ways that are generally disadvantageous from a natural heritage point of view. Indeed, in some areas – particularly the NW mainland - it now offers few direct benefits for the environment.

• The challenge facing us is to enable crofting to adapt to the demands of a changing society and a changing economy, while continuing to provide a basis for social cohesion in remote areas and continuing to provide a high level of environmental goods and services. We believe that this requires new blood and new ideas, even if introducing them involves a degree of risk.

Active management of croft land is critical to maintain the natural heritage and provide an attractive countryside for people to experience and enjoy

Specific Comments

We do not wish to comment on the proposals to reform the Crofters Commission in Part 1 of the Bill, except to support the principle of crofters themselves being more effectively represented.

We support the proposal in Part 2 to create a Crofting Register. We were concerned that the charges first proposed for registering crofts under the new system would impose a significant burden on many crofters, so deterring them from registering their crofts voluntarily. So we welcome the revised proposals for significantly reduced charges (though noting that these will be determined by subordinate legislation).

Although the Bill is now weaker in its provisions relating to absenteeism, its approach generally is more straightforward and more readily enforceable than the residence requirement proposed in the draft Bill.

We strongly support the arrangements the Bill would introduce to ensure that crofts are put to a ‘purposeful use’. We are pleased to see that they may be exempt from
this requirement, however, if the crofter is taking active steps to manage the land for conservation.

The use of croft land for speculative purposes could be seriously detrimental from an environmental point of view. We welcome the amendments in Part 4 of the Bill relating to de-crofting, and in particular the requirement for the Commission to take into account the implications for the landscape and environment of the area. The longer period for which a ‘claw-back’ from the proceeds of a sale of de-crofted land will apply is an important control in this respect.

Finally, we support the proposal in Part 3 of the Bill to treat owner-occupiers and tenants alike.

Scottish Natural Heritage
04 February 2010

SUBMISSION FROM SHETLAND ISLANDS COUNCIL (ECONOMIC DEVELOPMENT UNIT)

Crofting Reform (Scotland) Bill

Consultation response from Shetland Islands Council (Economic Development Unit)

The following has been prepared by an Economic Development Project Manager in the light of the previous submission to the Draft Crofting Reform (Scotland) Bill consultation, made on 15 July 2009 by the Head of Business Development after taking advice from the agricultural sector in Shetland at the Agricultural Panel meeting on 24 June 2009.

Part 1 – Reorganisation of the Crofters Commission

Part 1 proposes reforms that are intended to make the Crofters Commission more effective in delivering its core function of regulating crofting. Through changing the constitution of the Commission to allow for directly elected members, the Bill aims to make the Commission more representative of, and accountable to, the people it regulates. It also proposes to give the Commission greater flexibility to develop regulatory policy so that crofting develops in the interests of crofting communities and the wider public interest. Changes are also proposed to the powers of the Commission to bring it into line with more conventional non-departmental public bodies that receive grant-in-aid and have the flexibility to spend their budgets as they see fit.

SIC EDU response - It is positive to see that the proposal for Area Committees has been scrapped, with the retention of the existing assessors’ network acknowledging the strengths the latter already possesses. We would reiterate our previous
suggestion that the assessors’ network be built on to become the main way to inform and take decisions; similarly, if the existing Commission structure is to be strengthened, it may be healthy to remove the appointment of the Chair of the Crofters Commission from the discretion of the Minister, and instead put it to the vote of the existing Crofters Commissioners.

Part 2 – The Crofting Register

Part 2 of the Bill proposes to create a new Crofting Register which, in effect, will eventually replace the existing Register of Crofts, which is now considered to be incomplete and outdated. The Bill gives responsibility for establishing the new register to the Keeper of the Registers of Scotland, who is responsible for maintaining other property registers in Scotland. The new Register will be map-based and will clearly define the extent of, and interests in, a croft and other land held in crofting tenure, such as common grazings. In addition to providing crofters with greater security over their croft, an accurate and current legal register is considered to be important in the effective regulation of crofting.

SIC EDU response - While it is good to see that the estimated average cost of registering croft land has reduced to £80-£130 from the original estimate of £250, we still question the rationale behind the new registration process as a whole. In particular, we remain unconvinced as to the practical benefits for crofters themselves in the proposed new Register, and concerned that this will inflict yet another layer of additional bureaucracy upon hard-pressed crofters. It seems more logical for the Scottish Government to support the continuing efforts of the Crofters Commission to improve the existing Register of Crofts.

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Part 3 of the Bill defines “owner-occupier crofters” and puts in place a new process for addressing absenteeism and neglect on croft land. At present, the Commission has a discretionary power to tackle absenteeism and action on neglect is dependent on either a complaint being made or the consent of the landlord being given. The new process places a duty on the Commission to take action in respect of absenteeism and neglect by both tenant and owner-occupier crofters. This will help to ensure that crofting contributes to economic growth by requiring crofters to be resident on, or near, their croft and to put it to some form of productive use.

SIC EDU response - We agree with the premise that croftland should be put to productive use, but remain concerned that in a geographically fragmented island group such as Shetland the occupancy requirement for an owner-occupier being resident within 16 kilometers of a croft may be unreasonable if much of that distance is made up by open sea – in practice but a short ferry crossing from a place of residence to the croft. Similarly, this distance criteria fails to sufficiently recognise the expediency by which for a crofter’s family to enjoy ready access to community facilities it may be desirable for the family unit as a whole to live apart from the croft, and still work the croft on a regular and productive basis.
Part 4 – Further amendments of the 1993 Act

Part 4 of the Bill makes other changes to the Crofters (Scotland) Act 1993 that are intended to deliver a number of policy goals. Sections 25 to 29 aim to tackle speculation on the development value of croft land through strengthening the grounds under which the Commission may reject an application to decroft. At present, the Commission regards itself as obliged to approve applications to decroft where outline planning consent has been granted. These provisions enable the Commission to reject applications to decroft where it considers the cumulative effect of such applications to have a negative impact on crofting in the area, the long term sustainability of the community in which crofting takes place and the corresponding environmental, cultural and landscape benefits derived from crofting. A change to the requirement for approval for the enlargement of crofts is also included at section 30 of the Bill and section 31 proposes changes to the processes for obtaining Commission consent to make this process simpler and more efficient.

SIC EDU response – we commend strengthening the Crofters Commission’s discretionary powers to consider applications to decroft the finite resource of existing croft land.

Part 5 – General and Miscellaneous

Part 5 of the Bill includes general provisions concerning matters such as regulations and orders, ancillary provision, minor and consequential amendments and repeals, and crown application. In addition, section 32 includes a power to make modifications of enactments relating to crofting ahead of proposed consolidation, which will allow for the simplification and clarification of crofting law.

SIC EDU response – there is no mention of charging crofters for regulatory work in the Bill as it stands, and if this represents a change of heart from the proposal to charge for this in the Draft Bill, we are supportive of this decision. However, it would be constructive to have an explicit indication that this is indeed the case, and crofters will not be charged by the Commission for regulatory work carried out as part of the service the Crofters Commission provides.

General SIC EDU comment – Croft House Grants

While it is pleasing to see that the draft proposals to introduce standard securities to allow crofters to borrow against croft tenancies have been dropped, it is disappointing that alternative proposals to support crofter-housing have not been included in the Bill as it stands. The existing Croft House Grant Scheme levels of intervention (up to a maximum of £22,000), though better than nothing, belong to an earlier age when the cost of building was considerably lower than it currently is. With no realistic sign of the cost of raw materials coming down in the future, this support measure needs to reflect the realities of the house construction industry of the present rather than the past, and nowhere more so than in island communities where all materials incur additional freight costs that are passed on to the crofter, and a limited house construction labour-pool also increases the cost of all building works.
SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

The Convenor of the Rural Affairs and Environment Committee kindly suggested that if the SRPBA had any further comments to make to the Committee following the oral evidence given on 10th February 2010, we should make such comments in writing to the Clerk.

Having now had the opportunity to read the Official Report of 10 February 2010, we wish to make one further comment directly relating to a question asked by Peter Peacock MSP to the previous panel of legal experts. For convenience, we quote verbatim from Col 2367 of that Official Report:

Col 2367

Peter Peacock: The bill, in part, seeks to equalise the burdens on both owner-occupiers and tenanted crofts. A couple of weeks ago, Government officials told us that they are considering equalising access to grants for owner-occupiers and tenants, but they have not yet decided to do so. Do you have any observations on the bill's current definition of owner-occupier? Secondly, what would be the purpose of one's remaining a tenant if everything, including access to grants, were to be equalised?

SRPBA comments as follows:

Croft owner occupiers are already subject to special arrangements in that they have not been required to let their crofts as would normally be the case for the crofting landlord. Proposals in the Bill seek to bring croft owner occupiers more in line with croft tenants. However, any proposals which allow all the benefits, including grants (Housing and Agriculture), which presently accrue to croft tenants to be available to owner occupiers are likely to have significant and unintended consequences. Furthermore, croft owner occupiers are able to occupy their croft as landowner.

As suggested in the question by Peter Peacock MSP (as above), such a situation, combined with the proposal in the Bill to discontinue assured family succession, will encourage croft acquisition by tenants, since the present benefits of being a tenant will be eroded. This would seem at odds with Government’s policy to safeguard and encourage crofting.

Dr Jean Balfour
Chair, SRPBA Crofting Group
22 February 2010
SUPPLEMENTARY SUBMISSION FROM JIM MCGILLIVRAY

Can I please expand on a few points I raised at today's meeting:

1. The Murchison report has indicated that tenant-only no-right-to-buy crofts are feasible under current legislation with help from the Land Court. I would prefer to see formal recognition of such holdings in the new legislation.

2. Such recognition would encourage the creation of new crofts as landowners would not be saddled with the burden of new holdings being immediately bought up and sold on – very important from the perspective of benevolent Community Landlords trying to retain young people in their communities. The way things are being diluted down, it would also make the new legislation worthwhile for this point alone, and complement the croft-creation initiative of the previous Act. Private Landowners could also be urged towards croft-creation by sophisticated adjustment of the Local Authority Valuation system, with suitable sticks and carrots.

3. The essence of crofting has always been about tenancy – those who do not wish to be part of the system can currently de-croft their holdings and move completely into the free market system. Those who are owner-occupiers have the benefit of security for bank lending, and the ability to sell plots for development, and are in a privileged position. Due consideration must still be made for those who adhere to the original principles of tenancy.

4. Further to this point, the tenant of a no-right-to-buy holding, whilst adhering to the original traditions of the crofting system, are deserving of support under CCHGS and should be eligible, regardless of geographical location, for the full support of that scheme.

Jim McGillivray
23 February 2010

SUBMISSIONS FROM CROFTERS’ RIGHTS EMERGENCY ACTION GROUP (CREAG)

I write on behalf of the members of CREAG, the Crofters’ Rights Emergency Action Group. This group was formed in direct response to the Shucksmith Report on which this present Bill is solely based.

There is an overwhelming view amongst crofters that the Bill should be abandoned. We wrote to every MSP to this effect (copy attached). We recognise that many of the proposals, such as devaluing people’s homes by way of burdens and encouraging debt on a tenancy by way of lease (which may have included your home) have been dropped. However, there is nothing in the Bill whatsoever that will benefit crofters in today’s world. The aims of the Government cannot and will not be met by the proposed Bill, indeed, the Bill, if passed to law, it will make matters worse. The problem is essentially an economic problem and not a legislative one. Efforts of
the Rural Affairs Committee would be better spent examining the Pack Report and any possible furtherance of its aims.

From the outset, not only did Shucksmith never visit a seventh of the crofting area to take evidence, but he never ever asked the present Crofters’ Commission for their views. Surely the views of experienced civil servants who have run a dedicated department for many years are important to have? I note that you have invited the Commission to give evidence in Thurso, but it is all a bit late in the day.

A The briefing paper is automatically weighted to landlordism, as, unfortunately, the author only used Crispin Agnew’s book as his main reference. Anyone producing such a paper has to read both Agnew and Flynn’s book, which essentially say the same thing, but from a different angle. It would be quite wrong to use either one or the other. Landlords come out very well in this proposed legislation and I suspect this is merely a ploy to try and win Tory votes as a minority government will have to push the legislation through somehow. In the podcast Tom Edwards misleads by stating a crofter is “usually” a tenant. Any crofter is a tenant in law. He or she may also be principal or have a share in a trust or other body which is principal. Crofting is a tenancy system. The main difference to other forms of tenancy is that the home was built and paid for by the tenant.

B The two main thrusts left of Shucksmith are a reformed Crofters’ Commission and the creating of a new register. There was an overwhelming view of support for the Commission in Shucksmith’s research, but this was simply brushed aside by Shucksmith in favour of a totally new system. It is very easy to purport that local committees and local accountability is a way forward, but in practice, in areas of very small population, it is fraught with difficulties. The new local PR electoral system, as applied to areas of low population density, is extremely problematic and this is recognised by the Electoral Commission. However, the powers-that-be continue to use population as the main indicator and the Boundaries Commission have just followed suit with the latest reorganisation of parliamentary boundaries. The change of name is very dangerous as it opens the door for every Tom Dick and Harry to define “Crofting” to suit their remit and jobs. Crofting is something crofters do and farming is something farmers do. A farm is not a public asset to be experimented with and neither is a croft tenancy especially when it is also your home.

C A register? This is like asking every householder in Scotland to pay a tax to register their home in terms of title deeds, boundaries, etc just in case they may wish to sell it or do something to it in future, such as put up a shed or garage. Nobody in their right mind would do this, as the legal costs involved are horrendous. Why ask the tenant of a property to do this and not the principal? The tenant has no right whatsoever to any title deeds, documents, etc. Because crofting is also often a communal activity, all that would happen is that you would set neighbour against neighbour in squabble after squabble over rights of access to grazings, to fanks, to harbours, etc. What is the benefit? The Lairg minutes clearly show that one respondent summed it all up when he said: “Nobody in this room will be alive to see the benefits of this proposal”.

14
D We do not trust the whole thrust of this proposed bill. For example, in the explanatory notes, there is one very small paragraph (86 I think) referring to statutory instruments, yet when you actually examine these proposed instruments, they propose that major matters can be changed and not minor ones in the future, eg it’s like saying of the Westminster Parliament that we may change the number of MPs, change the voting system, alter the quorums, etc all by minor legislation and not an Act. This is outrageous.

E Crofters operate under the same controls as everyone else in terms of cross compliance and good practice and there are many regulations already via SEPA or SNH. The grazings regulations and existing statutory conditions of tenure are not a problem. Part 3 then becomes largely irrelevant.

F The explanatory notes state “A number of minor and technical amendments to crofting law” Please be very careful when this phrase is used. There is no such thing in crofting legislation as the legislation is so specialised and complex.

I noted from the submissions some other points. The Law Society of Scotland stated that the 1993 Act in conjunction with this Bill was extremely complicated to understand, yet the 1993 Act was supposed to be a consolidation Act to make things simpler. It’s almost impossible for the layman to understand what is going on and the explanatory notes are questionable. Simon Fraser does raise a good point about inheritance and procedure. He also states how development money is going to consultants and dukes and not to crofters. Crispin Agnew has to correct himself on quite a clear point of crofting law, that I was surprised that even he made a mistake in. He raises a very good point on tribunals. There is reference to the perceived loss of good crofting land to housing to the detriment of the economic prosperity of a croft. Michael Otter gives the actual figure 0.5 %. Is it not somewhat ironic that the most valuable land “in crofting”, in the whole of the Highlands and Islands, the bull stud farms are to have a significant proportion sold off by the government to pay for running the farms! The phrase “do what I say not what I do” is the message crofters receive.

To conclude. The committee is left with trying to make sense of a culmination of a long process of land reform whereby Crofters have been used as a model to be experimented with by academics. This goes right back to Lord Sewel’s time. They all can be traced to Aberdeen University geography dept. It culminated with mad proposals to devalue only crofters homes at a time when the boom went bust in a big way. There is absolutely nothing in this legislation that will help crofting today. The strength of the crofting system is the fact that it has evolved to a very flexible system in terms of providing rural housing in vastly diverse areas of the Highlands. It would be unusual today to find a crofter with mortgage or repossession problems, unlike the rest of society. Ultimately, who will live in these houses in the future will depend on the economic prosperity of crofting. The answers are in Pack, not in legislation. Stop hitting crofters with sticks and try a carrot instead.

18 February 2010
DRAFT CROFTING REFORM (SCOTLAND) BILL

[Clerk’s note: this is the letter to MSPs referred to in the immediately preceeding submission from CREAG]

I write on behalf of the above organisation to ask if you could please support us and other crofters who are alarmed and aghast at the content of the above.

CREAG is the only crofter organisation that has clearly examined and consistently called for the Bill to be abandoned. We were formed in July 2008 in response to the Shucksmith Report. The draft Bill is a rehash of Shucksmith. The Minister, Rosanna Cunningham, who holds the portfolio for crofting, can not find time to meet us despite a request of any time and anywhere.

The committee of CREAG is composed entirely of volunteers: crofters who were elected because they had various expertise e.g., agriculture, legal, banking, community ownership, culture, etc. We have no political affiliations and have been asked by crofters, across the Highlands and Islands, to represent their concerns.

The proposed legislation is discriminatory and bureaucratic. It is very serious amounting to State theft of the equity of crofters’ homes and interference in the heritable rights of their families. No other section of society is treated in this way. The bill would also introduce massive costs and needless legal disputes, none of which is sustainable from croft incomes; all this in the face of a deep recession.

The proposals are reminiscent of the Eastern blocs' treatment of peasants, rather than upholding the principles of the free world. Scots who have emigrated to the new world would be shocked at the Scottish Government’s communist type proposals.

Sadly, there is nothing in the bill to work with. For example: there is only one paragraph on the second last page of the 136 page ‘consultation document’, referring to young people, despite this being one of Roseanna Cunningham’s six opening bullet points. This section of society is the future of crofting and they need jobs, training and hope for the future, especially in the current difficult economic climate. Please bin this deplorable bill and please look on our website to see what crofters’ across Scotland think and wish for the future.

SUBMISSION FROM DAVID FORBES

Owner Occupier Crofters

I could not understand any of the logic of the proposals as the present system seems to have worked without complaint for some time.

It is important that crofting is not divided into two types.

By definition a crofter is a tenant. Being a tenant is quite different to being the principal, whether you are a council house tenant, farm tenant, etc. It is the land
which is subject to crofting law and it is well registered as such. It is the duty of the tenant to operate under the crofting laws, e.g. stocking density via soumings. The landlord of croft ground also has duties to let the land appropriately.

If anyone, including the sitting crofter, chooses to buy croft land, be it privately, by agreement or by compulsory purchase, the land remains subject to the Crofting Acts unless it is decrofted (by the crofter) or resumed (by the landlord).

The crofter who buys his croft then as principal should appoint a tenant. This can be himself, as long as he has normal Crofters’ Commission approval the same as any other crofter.

At the moment, the Crofters’ Commission chooses to exercise its powers, that is the present crofting law, by allowing the crofter who purchases his croft to assume the role of tenant. If this system is causing some administrative problem or whatever, the easiest and simplest way to solve it is to exercise the existing law; that is, ask the person who now crofts the land to register himself as the crofter, like any other crofter. Where is the problem?

If you choose to become a principal of anything, you can make yourself subject to a whole load of legislation which a tenant would not be responsible for. In crofting terms, you are responsible for putting a tenant in the croft that you own. That is the choice of any individual if he owns land under crofting tenure.

If, in law, you create a new category of crofter called an owner-occupier crofter, it will open up a can of worms with much cross-legislation and many responsibilities which will merge between the roles of a tenant and a principal. Legally, it is much better to keep the two definitions clearly apart and existing legislation allows this and it is very simple to do compared to what is proposed.

**Conclusion:** what is proposed would be to the detriment of crofters and crofting, as it would create confusion, two tiers and mixed messages. Crofting is a tenanted form of agriculture.

18 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.

Foundation for Common Land

The Scottish Crofting Federation has issued a news release following their attendance at a meeting in Cumbria to discuss the proposed Foundation for Common Land which seeks to create a forum for consultation and discussion through which graziers may take issues to the UK and European Governments. A copy of the news release is in the Annexe.

National Parks Consultation

The Scottish Government has published its report on the consultation on two National Park Proposals to modify the original National Park Designations Orders. The report and the consultation responses can be read online at:

http://www.scotland.gov.uk/Publications/2010/02/19115042/0

Single Outcome Agreements

The 2007 concordat between the Scottish Government and local government committed both to work towards Single Outcome Agreements for all 32 councils. The final annual reports for 2008/09 on the implementation of the first round of Single Outcome Agreements can be read online at:

http://www.scotland.gov.uk/Topics/Government/local-government/SOA

Reports from the Auditor General for Scotland

The Public Audit Committee received a briefing at its meeting on 10 February from Robert Black, the Auditor General for Scotland, on a report he has published which relates to the RAE portfolio. The memo from the Clerk to the Public Audit Committee on these reports can be read online at:

Delegates from the Scottish Crofting Federation were in the north of England last week to attend a major meeting discussing the formation of a UK and Ireland wide Foundation For Common Land.

At the meeting held at Melmerby in Cumbria were graziers from throughout the UK and Ireland who work common land, and members of representative groups that support them. A series of short presentations at the outset of the meeting showed that in some areas, such as the Highlands and Islands, there is a strong local representative system already in place, while in other parts of the country representative groups are less developed or do not exist at all.

The proposed Foundation for Common Land will weave together existing and emerging groups into a national commoners network or ‘observatory’.

Among the benefits that its promoters anticipate is that the Foundation will form a comprehensive forum for consultation, enabling effective discussion and efficient input to debate. It is also intended to act to influence research, spread good practice and share understanding of how different land tenure systems work.

Norman Leask, who attended the meeting with other members of the SCF, said: “This clearly has the potential to be an exciting development for crofters if the Foundation for Common Land is able to create a united voice with which graziers on common land can speak to the UK and European Governments on issues of common interest.

“This would be important for crofters because, although the SCF has formed good working relationships with Scottish politicians and with key officials in the Scottish Government, this has proved more difficult with the UK Government. Having access to the UK Government is important for us – not least in that the UK is the European Member State and the UK Government is therefore the key to enabling crofters and other common land holders having a voice in Europe.”

Andrew Humphries, who hails from Cumbria and is the Chair of the Foundation for Common Land, was one of the driving forces behind the network. He outlined his reasoning for proposing it, saying “Commons are no anachronism but are increasingly recognised as key resources for a range of public goods and of significant importance economically in the production of quality livestock. Through better communication and understanding, a collaborative approach should benefit all parties involved.”

He has proposed a ‘Commons Charter’ which highlights the economic, social and environmental benefits of common land holding systems, their historical importance and the need to share knowledge about common systems with the general public.

Norman Leask added that the meeting had exemplified the importance of the crofting system in maintaining small scale agriculture in the Highlands and Islands – and the strong communities that exist in the area because of it.
He said: “Time and again, English delegates told us about the struggles they have to retain the integrity of their holdings and their communities in the face of a system of land tenure that is still in key respects feudal. With legislation currently going through the Scottish Parliament, it is vital that politicians understand that strengthening the crofting system is a vital part of ensuring the integrity of Highlands and Islands communities.”