The Committee will meet at 10.00 am in Committee Room 2.

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

   the Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60).

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

   John King, Registration Director, and Andy Smith, Deputy Keeper, Registers of Scotland;

   and then from—

   Roseanna Cunningham MSP, Minister for Environment, Bruce Beveridge, Deputy Director, Rural Communities Division, Iain Dewar, Bill Team Leader, Rural Communities Division, and Heather Wortley, Solicitor, Legal Directorate, Scottish Government.

3. **Crofting Reform (Scotland) Bill (in private):** The Committee will consider the evidence heard earlier in the meeting.

Peter McGrath
Clerk to the Rural Affairs and Environment Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: peter.mcgrath@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1**

- The Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60)  
  RAE/S3/10/6/1

**Agenda Item 2**

- SPICe briefing paper (private)  
  RAE/S3/10/6/2

- Submissions pack  
  RAE/S3/10/6/3

- Correspondence from the Scottish Government  
  RAE/S3/10/6/4

- Subordinate Legislation Committee report on the Crofting Reform (Scotland) Bill  
  RAE/S3/10/6/5

**For Information**

- Recent Developments  
  RAE/S3/10/6/6
The following submission has been received from those giving evidence to the Committee at the meeting on 10 March:

REGISTERS OF SCOTLAND………………………………………………………………2

The following submission has been provided by a witness who was unable to make the meeting on 23 February:

NICKIE MAY……………………………………………………………………12

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

JAMES MCPHERSON………………………………………………………..15

The following submission was received just before the witness gave evidence at the Committee's meeting on 2 March:

JIM NICOLSON……………………………………………………………………17

The following supplementary submission has been received since the Committee's meeting on 2 March:

SCOTTISH NATURAL HERITAGE ………………………………………19
SUBMISSION FROM REGISTERS OF SCOTLAND

Purpose

This paper has been written to assist the Rural and Environment Committee's consideration of the Crofting Reform (Scotland) Bill, in particular Part 2 relating to provisions for the proposed new Crofting Register. It sets out:

- the aim of the proposed register;
- the estimated costs and resource to set up and administer the proposed register;
- the milestones to be achieved before the register is delivered into service; and
- the structure of the proposed register.

The paper's annexes cover the following:

Annex A - Further background information and assumptions on estimated costs and resource.

Annex B - Timeline showing milestones leading to commencement of the Register.

Annex C - Work flow diagram depicting the registration process.

Introduction to Registers of Scotland (RoS)

1. RoS is a non-Ministerial Department and is headed by the Keeper of the Registers of Scotland. The Keeper is a non-Ministerial office holder in the Scottish Administration and is the Chief Executive of RoS. RoS is a key part of the infrastructure that supports the Scottish economy, underpinning the property market by registering and providing State-backed indemnity protection for property transactions in Scotland, worth up to £50 billion each year.

2. RoS’s work is dominated by the two main registers that relate to rights in land - the General Register of Sasines (established in 1617) and the Land Register of Scotland (established by the Land Registration (Scotland) Act 1979). The Keeper also has responsibility for 14 Judicial and Crown Registers, collectively known as the Chancery and Judicial Registers (CAJR). RoS’s work is demand-led, fluctuating in response to activity in the property market, particularly the housing component. We typically handle around half a million registration transactions each year.
Background to new Crofting Register

3. The final report of the Committee of Inquiry on Crofting (referred to from now on as the “Shucksmith report”) indicated that, despite the duty contained within the Crofters (Scotland) Act 1993 for the Crofters Commission to compile and maintain a register of crofts, the register had never been complete or up to date. The Shucksmith report proposes that the current functions of the Crofters Commission be separated and that “responsibility for the Register of Crofts should be taken over by the Registers of Scotland—following a consultancy exercise to assess the accuracy of the Register, the specification required to maintain appropriate regulatory action in the future and a transition plan to bring the Register up to that specification.” That recommendation was accepted by Ministers.

4. The purpose of the proposed new Crofting Register is to provide legal certainty over the key interests in a croft such as the details of the tenant, the land owner, the extent of the croft and any other interests in a croft. The proposed Crofting Register will be map based; that is to say the legal boundaries of a croft will be captured and shown on a map held by the Keeper.

5. A draft Crofting Reform Bill was published on 19 May 2009, beginning a 12 week consultation process. 19 public meetings were held over 7 weeks across the existing crofting counties and the proposed new areas for crofting. The written consultation attracted 422 responses. From the responses, there is evidence of support for the establishment of a map-based Crofting Register but also a lack of support amongst crofters to pay for the costs of registration.

Costs of Registration

6. We have estimated that the likely capital costs associated with establishing a Crofting Register would range between £1,043,050 and £1,595,050 inclusive of VAT. The Government has agreed to meet the capital costs of a new register. It is proposed that the annual running costs of the Crofting Register will be covered by registration fees. The Keeper of the Registers of Scotland is required to recover any costs associated with the register and we aim to ensure the costs of registration are kept as low as possible. These are estimated to be around £80 - £130 per application for registration.

7. It is intended the new register will share information technology developed separately and in place as part of the replacement back office land registration system. This further reduces capital expenditure and running costs for the proposed Crofting Register. Citizens would also benefit from accurate comparisons by searching two registers from the one Government body on the one IT system.

8. Registration fees will be set to recover the annualised running costs. The running costs would comprise both IT service costs and also the costs of the staff required to run the new register. Service costs relate directly to the capital cost for the IT system underpinning the new register and would range
from £138,000 to £54,400 per annum. Resource to run the register would be
dependant on the volume of applications. For example, should 1,300
applications be processed per annum, this would result in 0.13 Full Time
Equivalent (FTE) at the first band supervisory grade equivalent and 0.97 FTE
at support grade levels. Further details on service costs, resource and project
volumes and projected levels of registration fee are narrated in Annex A.

9. We are in consultation with the Future of Crofting Team to investigate any
advantages to be gained from economies of scale where related multiple
crofts are submitted simultaneously for registration. This would be
appropriate where Crofting Communities or Townships wished to voluntarily
register their croft in the new register and when large crofting estates changed
hands.

10. Whereas with the Land Register, virtually all applications for registration
are submitted by a solicitor on behalf of the applicant we do not envisage this
being the norm with applications to the proposed Crofting Register. Rather,
we anticipate the application for registration would be submitted to us, via the
Crofters Commission, directly by the applicant. At present, Crofters do not
routinely engage a solicitor in connection with applications to the Crofters
Commission. We see no reason why this practice should alter. Accordingly,
from the registration perspective, we do not consider that the applicant will
need to engage a solicitor.

11. One issue raised in response to the public consultation concerns the
availability of a base map for use by crofters requiring to submit an application
for registration of their croft in the new Crofting Register. Any such application
would have to be accompanied by a plan depicting the extent of the croft.
Some consultees expressed concern that they would have difficulty obtaining
a suitable base map at low cost.

12. The plan that a crofter submits for registration would need to meet a
minimum criteria to enable the details to be accurately transposed on to the
Ordnance Survey map. In conjunction with the Future of Crofting Team, we
have been exploring potential options whereby a crofter can obtain a base
map, which meets our criteria, on to which they or their solicitor or surveyor, if
they choose to involve such a party, can add the croft extent. RoS will not
require that the plan be drawn up by a surveyor. Rather, our approach is to
accept a plan that meets our criteria. We will publish guidance on the criteria.
We also propose to make available, on a cost recovery basis to Applicants
(currently estimated to be £15) an OS Mastermap extract on to which they
could delineate the extent of the croft.

13. The Government has committed to paying for the cost of mapping all
common grazings on to the Crofting Register. Currently, there are 853
common grazings registered with the Commission. It is proposed that this
exercise would be carried out by a team of GIS experts within either RoS or
the Crofters Commission. The future of crofting Team advise that a team of
two GIS experts could be expected to map details of all common grazings
within 4 years which would cost in the region of £380,000.
Information Fees

14. It is proposed that the Crofting Register be a public register. There will be no fees charged for searching or examining the register electronically. Access to citizens via a web based portal is one of the options being considered. Copies of the register entry viewed via the web can be downloaded free of charge. It is proposed that fees will be charged should a party request an official extract from the new Register: that would be charged in accordance with the extract fees that apply to the other registers maintained by the Keeper (currently £15).

Proposed Timescale

15. Some preliminary work has commenced on the design of the new Register in order to ascertain likely costs. Based on achievement of the first milestone of Royal Assent of the Bill by the beginning of July this year, the design phase for the system underpinning the new Register would last 12 months potentially concluding in June 2011. This would lead directly into a 13 month development phase. Taking account of activities to be undertaken during the 2 month delivery phase infer's a commencement date for the Register no earlier than September 2012. RoS has devolved the delivery and maintenance of its IT systems and architecture to BT as strategic partners. The indicative timescales have been determined in collaboration with BT and are our best estimate. Further details of project stages are shown at Annex B.

Proposed Registration Process

16. The anticipated registration process for the new Register has been agreed by RoS, the Future of Crofting Team and the Crofters’ Commission and a high level work flow diagram depicting the proposed registration process in the new register is outlined in Annex C. Initially, all regulatory decisions submitted to the Crofting Commission that trigger first registration on the new register would also require a completed first registration application form and appropriate registration fee to be submitted simultaneously. Where an update to the new Register is necessary without an associated regulatory decision, the registration form and fee would still be submitted to the Crofters Commission in the first instance. This ensures that the applicant only has to interact, in the first instance, with one government body.

17. The Commission would validate the details on the application form with those on the Register of Crofts maintained by the Commission. If satisfied the details concur with those held on the Register of Crofts, the Commission would forward the application to register in the proposed new Register together with the fee submitted from the Crofter. The Commission would then undertake to advise the landlord of the croft and the landlord and tenants of land adjacent to the croft of the provisional registration and that they would have 6 months to appeal to the Land Court if they wished to contest any of the information contained in the provisional registration. The Commission would
also write to the applicant and advise of the need to put up a public notice in accordance with criteria set by the Commission. Should the details submitted with the application not concur, the Commission would reject the application and return the submitted fee to the Crofter.

18. When RoS receive the validated application from the Commission, an entry would be made in the new register reflecting the relevant details and noting the entry as having a provisional status. Where no appeal is made, the provisional registration would be made permanent and no longer have a provisional status after the 6 month period.

19. Any appeal on the provisional registration would be made to the Scottish Land Court who would undertake to inform the Keeper of receipt of the appeal. The Keeper would in turn note short particulars of the appeal on the Croft entry on the new Register until such time as the Court advises the outcome of the appeal. Where the Court dismisses the appeal and the 6 month period elapses without any further appeal, the registration would be confirmed. Where the Court upholds an appeal relating to a boundary dispute, the registration would be amended to reflect the decision of the Court. Where the Court upholds an appeal relating to any other aspect of the registration of the croft, the registration would be rejected. When the appeal process is finalised, the Keeper would amend the status of the entry in the new register and issue confirmation of registration in the new Register to the applicant and the Commission.

JOHN KING, REGISTRATION DIRECTOR

ANDY SMITH, DEPUTY KEEPER

Annex A

INFORMATION AND ASSUMPTIONS ON ESTIMATED COSTS AND RESOURCE

Assumptions

1. Set up costs will be met by grant from Scottish Government. These are estimated to be in the range of £907,000 - £1,387,000 exclusive of VAT (or £1.07M - £1.63M including VAT).

2. Project Costs will be met by grant from Scottish Government. Project Costs have been estimated using Register of Floating Charges as a guide and are estimated to be £243,285 spread over 3 years.

3. The Register will not become operational until 2011/2. Service costs and resource costs will not be incurred until 2011/2. Costs have been calculated until the end of the Strategic Partnership Agreement. However, there will still be service costs after this date payable to a service provider.
4. Service charges will be in the range of 6-10% of capital costs. BT gave this estimate based on Register of SSSI (6%) and Register of Floating Charges (10%).

<table>
<thead>
<tr>
<th>Service Charge percentage of Capital</th>
<th>£1.387M capital</th>
<th>£0.907M capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>130</td>
<td>90</td>
</tr>
<tr>
<td>6%</td>
<td>80</td>
<td>60</td>
</tr>
</tbody>
</table>

5. 1,300 applications expected per annum.

6. 0.13 Full Time Equivalent (FTE) Registration Officer O2 and 0.7 FTE Support Officer 1 will be required to process 1,300 applications. 0.27 FTE Support Officer 2 would be required to carry out any administrative duties relating to 1,300 applications.

7. The service costs account for between 78% and 85% of the fee at the 10% level and 68% and 77% of the fee at the 6% level.

8. In year 2011/12 it has been assumed 97% of 1,300 applications will be First Registrations and 3% will be subsequent amendments. In year 2012/13 it has been assumed the split will be 95/5% and in 2013/14 it is assumed 90/10% split.

9. It has been assumed for the purpose of the calculation that the fee for a subsequent amendment will be half that of a first. It is acknowledged that there is potential for simple subseuqents and more complex subseuqents akin to transfer of part applications in land registration. This has not been factored into the calculation but can be assumed to be a midpoint of the first registration fee and the subsequent fee for any scenario narrated.

**Tables of fees**

10. Table 1

<table>
<thead>
<tr>
<th>Capital costs</th>
<th>£1,387,000</th>
<th>£907,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type Application</td>
<td>*FR</td>
<td>**DW</td>
</tr>
<tr>
<td>10% Service Charge</td>
<td>130</td>
<td>65</td>
</tr>
<tr>
<td>6% Service Charge</td>
<td>80</td>
<td>40</td>
</tr>
</tbody>
</table>
11. Table 2  
Fees calculated for using 910 applications (30% volume reduction)  

<table>
<thead>
<tr>
<th>Type of Application</th>
<th>Capital costs</th>
<th>10% Service Charge</th>
<th>6% Service Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>FR</td>
<td>£1,387,000</td>
<td>180</td>
<td>110</td>
</tr>
<tr>
<td>DW</td>
<td>£907,000</td>
<td>90</td>
<td>55</td>
</tr>
</tbody>
</table>

12. Table 3  
Fees calculated for using 1,690 applications (30% volume increase)  

<table>
<thead>
<tr>
<th>Type of Application</th>
<th>Capital costs</th>
<th>10% Service Charge</th>
<th>6% Service Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>FR</td>
<td>£1,387,000</td>
<td>100</td>
<td>70</td>
</tr>
<tr>
<td>DW</td>
<td>£907,000</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

13. Table 4  
Fees calculated for using 1,500 applications  

<table>
<thead>
<tr>
<th>Type of Application</th>
<th>Capital costs</th>
<th>10% Service Charge</th>
<th>6% Service Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>FR</td>
<td>£1,387,000</td>
<td>110</td>
<td>80</td>
</tr>
<tr>
<td>DW</td>
<td>£907,000</td>
<td>55</td>
<td>60</td>
</tr>
</tbody>
</table>

*FR = First Registration type application.  
**DW = Dealing with Whole type application.

14. Note - fees have been rounded to the nearest £10 for the FR fee and the DW fee set as half of that. This means the fees set do not exactly cover costs but sometimes over recover and sometimes under recover, but they are always within a few thousand pounds per year.

**Fee impact of Registration process efficiencies**

15. Table 5 shows the breakdown of the proposed First Registration fees, split between BT and RoS costs. It shows the very limited scope for any process efficiency savings. Since the RoS element is only approximately £20, a 10% efficiency saving say from receiving grouped applications would only equate to a £2 saving.
### Table 5

<table>
<thead>
<tr>
<th></th>
<th>£1.387M capital</th>
<th>£0.907M capital</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Service Charge percentage of Capital</strong></td>
<td>10% 6%</td>
<td>10% 6%</td>
</tr>
<tr>
<td><strong>Annual Service charge</strong></td>
<td>£138,700</td>
<td>£83,220</td>
</tr>
<tr>
<td></td>
<td>£39,700</td>
<td>£54,420</td>
</tr>
<tr>
<td><strong>BT service cost percentage of fee</strong></td>
<td>85% 77%</td>
<td>78% 68%</td>
</tr>
<tr>
<td><strong>RoS staff cost percentage of fee</strong></td>
<td>15% 23%</td>
<td>22% 32%</td>
</tr>
<tr>
<td><strong>BT element of FR fee</strong></td>
<td>£110.13</td>
<td>£61.50</td>
</tr>
<tr>
<td><strong>RoS element of FR fee</strong></td>
<td>£19.87</td>
<td>£18.50</td>
</tr>
<tr>
<td><strong>Total Fee</strong></td>
<td>£130.00</td>
<td>£80.00</td>
</tr>
<tr>
<td></td>
<td>£90.00</td>
<td>£60.00</td>
</tr>
<tr>
<td><strong>Potential staff savings for ‘multiple’ applications</strong></td>
<td>10% 10%</td>
<td>10% 10%</td>
</tr>
<tr>
<td><strong>Fee effect of above reduction in staff costs</strong></td>
<td>£1.99 £1.85</td>
<td>£1.95 £1.89</td>
</tr>
<tr>
<td><strong>Potential adjusted fee</strong></td>
<td>£128.01</td>
<td>£78.15</td>
</tr>
<tr>
<td></td>
<td>£88.05</td>
<td>£58.11</td>
</tr>
</tbody>
</table>

#### Economies of scale

17. Any economies of scale can only be achieved if certain criteria are in place, i.e. individual crofts abut and align with no discrepancies, the Crofters' Commission ensure all related applications are passed to RoS simultaneously and not drip fed in accordance with CC preliminary work. The estimated fees are based on 10 percent of all applications being passed to the higher grade for consideration. If the above criteria are met, this should remove the need to pass as many individual cases to the higher grade, hence the 10 percent estimated saving. Should there be a significant take up of multiple applications, RoS would need to ensure additional trained staff were available as a contingency to ensure applications are provisionally noted on the register timeously.
## Annex B

### Project Stages and Timelines

<table>
<thead>
<tr>
<th>Stage</th>
<th>Activity</th>
<th>Duration</th>
<th>Potential end date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Royal Assent</td>
<td></td>
<td>1 Jul. 2010</td>
</tr>
<tr>
<td>2</td>
<td>Design Phase</td>
<td>12 months</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stakeholder consultation exercise on requirements</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Requirements Capture</td>
<td>16 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sign off High Level Requirements</td>
<td></td>
<td>end of 2010</td>
</tr>
<tr>
<td></td>
<td>High Level functional Design produced and signed off</td>
<td>8 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Component Functional Designs completed and signed off</td>
<td>22 weeks</td>
<td>Summer 2011</td>
</tr>
<tr>
<td></td>
<td>*Design Phase complete</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Development Phase</td>
<td>13 months</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Technical solution</td>
<td>40 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BT System Test</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>RoS entry into User Acceptance Tests</td>
<td>1 week</td>
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<td></td>
<td>Entry into User Acceptance Test criteria met.</td>
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<td>Spring 2012</td>
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<tr>
<td></td>
<td>User Acceptance Testing</td>
<td>9 weeks</td>
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<tr>
<td></td>
<td>Successful completion of User Acceptance Testing</td>
<td></td>
<td>Summer 2012</td>
</tr>
<tr>
<td></td>
<td>*Development Phase complete</td>
<td></td>
<td>Summer 2012</td>
</tr>
<tr>
<td>4</td>
<td>Delivery Phase</td>
<td>2 months</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Go live preparation and dress rehearsal</td>
<td>8 weeks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>*Commencement Date and go live</td>
<td></td>
<td>Autumn 2012</td>
</tr>
</tbody>
</table>

*Denotes major project milestone*
Annex C

Basic registration process for First Registration application

Applications for Regulatory Decisions and/or registration in the new Register passed to Crofters Commission with appropriate application forms and fees.

New Register Application

Commission do not approve application as information is not consistent with information held in the current register.

Commission approves registration form by confirming that information is consistent with the information in current register.

Commission forwards application to ROS, writes to applicant, requests public notification of application to register and writes to those with direct interest.

Application to register croft on new register is rejected.

Application to register croft on new Register is successful and registration permanent.

Annex C

Regulatory Decision Application

Application for regulatory decision is successful and requires amendment to provisional record.

ROS update new register provisionally.

Appeal made to Land Court on issue not connected to regulatory decision.

Successful appeal on issue not related to boundary dispute.

Successful appeal on boundary dispute.

Unsuccessful appeal

Unsuccessful appeal

Provisional record amended accordingly.

No appeal submitted within 6 months.

Successful appeal on issue not related to boundary dispute.
SUBMISSION FROM NICKIE MAY

Introduction

While I was asked – I think - to attend the recent meeting in Thurso as secretary of the Orkney Area of the Scottish Crofting Federation, the comments that follow are primarily my own. Prior to attending the meeting I did contact several crofters/"like status" folk for their views; I will indicate where these are included.

Background

I run a "like status" holding on Shapinsay, Orkney stocked with rare breeds of sheep and cattle. The meat is sold direct to customers as whole or half lambs or as mixed eights and quarters of beef. I also knit, sell wool spun from the fleeces of the sheep and give farm tours. For the last two years I have been the Development Officer for the Shapinsay Development Trust while also managing the paperwork for our company. So while we are not strictly a croft here I like to think that I am a crofter by philosophy or attitude.

My “engagement” with the Crofting Reform Process

Firstly I will admit my knowledge of crofting law is scanty to say the least; I am aware of the basic principles. In preparation for attending the meeting I did read the policy document prepared by the Scottish Government several times so I am aware of what remains within the bill. I did however read the Shucksmith report from cover to cover and thought it a brilliant, comprehensive piece of work. What was particularly impressive was how it tried to look at the bigger picture and where crofting fits in and what it achieves for the public. Unfortunately, in the haste to throw out the unsavoury bits this broader, more objective viewpoint has also been flushed away.

So I would like to go back to basics and structure my thoughts and comments upon the bill around the fundamentals as to why crofting should be retained and therefore protected because of what it offers to society as a whole. I do appreciate that for some who read this will think some of the comments obvious and “ grandma and sucking eggs” will often be a phrase in their minds but I do think that the shortfalls in both the legislation and the treatment of crofting in the greater scheme of things as indicated by some of the comments being made by Mr Pack in the course of his Inquiry indicate that a reminder is needed.

Active, healthy crofting brings about public benefits in two fundamental ways: individual crofts are managed and run in ways that ensure that neighbouring holdings are equally able to be run and managed, and economically active people are present and contributing to their communities. The former has the added advantage of ensuring that marginally productive land does produce some food and so helps with food security and the latter ensures the survival of those communities that are peoples’ histories and gives the rest of us options about where we live and how we live. So I would like to go through the proposals within the draft bill and look
at how they impinge upon these two fundamental aspects of what crofting brings to society.

1. **A more effective Crofting – as I understand it is now to be called – Commission with elected members.**

   Essential to have members elected from the crofting communities in order to give crofters some feel of ownership over the Commission and a sense of working together rather than just been regulated and talked down to. Just be careful how the constituencies are drawn to make sure all areas are represented – especially crucial given the variations in crofting from area to area. Also darn good to be giving the Commissioners their own budget to mange so long as the appropriate legal safeguards are in place to prevent any personal liability. This way there is a chance that the Commission can be staffed by people wanting to see crofting prosper – in the broadest sense of the word - and continue. One Orkney crofter, on contacting the Commission, was advised to split his croft into several building plots and decroft it. The crofter refrained from this course of action as his family had been crofting the land for several generations.

2. **Register of Crofts**

   Obviously this is essential for effective regulation so I am somewhat amazed that the existing one has not been kept up to date and that the SG is expecting crofters to pay for the failing of previous governments to fulfil their obligations under the laws passed to date. From comments made by other crofters it would seem also that the SG has been understating the likely costs to the crofters and the piecemeal approach would seem to encourage future disputes. Others have quantified the loss of money from crofting that these proposals would bring about.

3. **Neglect & Absenteeism.**

   The draft proposals do nothing about coping with one of the fundamental causes of the above problems and the remaining support systems do even less. The SG cannot expect people to work the land and stay in their communities if they cannot make sufficient money to raise their families. While I agree with the comments that crofting is not a commercial activity, it still has to cover its costs and give value to the family if it is to be continued. Alongside that, there needs to be the scope for earning an income(s) from outside the croft. This is a crucial issue for Orkney. Because the land here is better than most found elsewhere in the crofting counties, crofters and “like status” folk can often earn enough from their holdings alone. It’s a darn good job as often there is little opportunity to earn an income outwith the croft – especially on the smaller Orkney Islands. Tourism is no where near as significant as it is in the west. We get some 2,000 visitors to Shapinsay each year which is higher than some of the north islands.

   As far as I can tell there is nothing in the bill to tackle this element of the problem. Existing support systems do nothing at all to help people establish the micro businesses that might be the difference between their communities thriving or dying. One crofter told me that when he looked at getting help through CCAGS to start a horticulture business the only greenhouse eligible under the scheme was a large,
expensive one from Wales. While my business did benefit under the ABDS scheme in the past I have always been wary of applying for grants which ramp up unnecessary costs or involve me tying up my business for several years while the money just flows through the croft to other businesses that are left free to act. There is the oft quoted difficulty about making successful applications to the SRDP – I would rather knit than try.

The overall costs associated with the registration process and the money lost to individual crofters and to their communities needs to be considered in this context of economic marginality. These wider economic issues were tackled thoroughly by Shucksmith but now seem totally abandoned. I see that one of the suggestions put forward at the meeting in Thurso was for there to be a separate support system for crofting other than the support systems for farming generally. My understanding was that CCAGS at least used to fulfil this role but, as it has become more difficult to apply for and it no longer seems to recognise that crofting is indeed different from farming and that the little things do truly matter, it does so no more. It is a disgrace that like status folk can no longer apply for CCAGS; crofts are relatively few in Orkney for historical reasons but we have like status folk instead who are just as crucial to our communities.

It would seem sensible that the Commission be pragmatic when looking at absenteeism if the croft is being worked by another crofter in the area. It needs to be relatively easy for an absentee crofter to arrange for their croft to be worked by another. Long term absenteeism could, however, be detrimental so perhaps absentee crofters should be asked what their longer term plans are and when do they think they will be back to work their crofts. While Shapinsay is not a crofting community we do see the effects of having fewer people on the island attached to the land. It is very difficult to get a spare hand if doing jobs around the holding which require two folk. As the number of holdings decrease, it is more difficult for the smaller farms to get stock off as there is not enough business for the hauliers to make up a complete load with the larger holdings having their own transport. We have our own trailer from the days we were south; otherwise it would be very difficult to run our business in the fashion we do as we rarely want to ship animals when others are doing so. As we are often only shipping one at a time we see if the hauliers can take them first as it is cheaper. A few large holdings all pursuing the same farming model makes the community less resilient if that model fails. In the longer term a lack of successor on these holdings can equally be problematic. As there are less people working on the island – many commute daily to Kirkwall – people do not have the time to put into running the community groups and activities so the possibilities for a life outside their houses declines.

4. Speculation

I would question how useful the clawback – extended or otherwise - will be in an area with owner occupied crofts unless some of the gain had to be directed towards a community group with a responsibility for investing the fund in the local community. Perhaps another option would be to allow crofts the right to sell off one building plot without triggering a clawback providing they submitted plans for how the capital raised was going to be reinvested in the croft.
Yes I do think that the crofting system ought to be protected and regulated. It is not that unusual, after all, to have legislation protecting the public interest against the ravages of private gain. The ability to create new crofts coupled with the independent regulation provided by the Commission is a useful tool for community groups looking to encourage long term settlement into their communities. That tie with the land cannot be underestimated. For instance a crofter on Hoy told me that he was the only one out of 3 years of school leavers to have returned to the island to work and he has only done that because of his tie to the land. As we have to deal with the effects of climate change and peak oil it will be useful to have crofters and small farmers and their communities around who are resilient, can show what can be achieved by working together and have the skills that we are going to need in the future. Once crofting is lost it cannot be recovered.

In summary, as far as I can tell, the draft bill does set out to make the existing legislation and regulation more effective which, while I accept that this is necessary for crofting to survive, means that the bill is all about “stick” and no “carrot”. As outlined above this means that crucial causes of neglect and absenteeism are not addressed. Without making it viable for people to remain within their communities by ensuring that they can secure enough income to support their families or viable for them to continue to work the land, then the bill does not put crofting in a position to achieve the wider public benefits of keeping economically active people within their fragile communities nor ensuring that the land is kept productive. The Commission will thus be given the unenviable task of trying to enforce a situation which is essentially untenable. And so the decline continues.

SUPPLEMENTARY SUBMISSION FROM JAMES MCPHERSON

I may have inadvertently misled the Committee when I said the number of absentees in Caithness was in single figures. It is the percentage of absentees in Caithness which is in single figures. This should not detract from the point – best demonstrated in the table on page 23 of the SPICe Briefing - that there is clear correlation between absenteeism and the availability of employment within a daily travel to work distance. An absentee – however that term may be defined – who can demonstrate an intention to return to the croft at some time should not be faced with stay away and lose the croft or return to unemployment.

Removal of such an absentee will simply churn croft tenancies.

At present a sub-tenant has no right to compensation for improvements. One approach to the problem of a long sub-let would be a returning absentee – who will benefit from a croft being kept in good heart - should be responsible for the compensation for improvements by a sub-tenant. A record would be made of the croft at the commencement of the sub-tenancy and only improvements suitable to the croft would attract compensation.

Part 3 of the Bill is directed at residency, misuse and neglect of crofts.
Part 3: crofters.
There is no merit in the proposals in Part 3 as they affect crofters

It achieves nothing that could not be achieved by enforcing the provisions, including the Statutory Conditions, of the present 1993 Act.

A crofter, as the tenant of the subject of the lease – the croft – occupies the croft as of right.

The removal of a crofter deprives that crofter of a possession – the lease – falling under the ambit of Article 1, Protocol 1.

The Scottish Land Court is generally held in high regard by crofters. It is a practical court which can apply judicial knowledge to proceedings before it. It is ‘user friendly’ and is particularly suited to deal with party applicants.

Removal of a crofter should be by application to the Land Court.

The interposing of the Crofters Commission to remove a crofter will result in the majority of cases being appealed to the Land Court.

In 1933 crofts were included in smallholdings.

‘- - it is noteworthy that the Case Law is as extensive as it is, when it is remembered how few smallholders have sufficient money to pay for the expense of litigation.’

Scott The Law of Smallholdings 1933

Nothing has changed.

On a practical note how many appeals to the Land Court under the Stated Case proposals could the Crofters Commission afford to lose – or even win - before the cost becomes a major constraint on their decision making?

The provisions, as they affect crofters, in Part 3 are not necessary to achieve the objectives relating to residency, misuse and neglect and should be dropped from the Bill.

Part 3: owner-occupier crofters.
There is some merit in the proposals at 19B and 19C read together.
An owner occupier does not occupy the croft as of right.
The owner cannot be his own tenant so is not a crofter having the protection of the Crofting Acts.
At the present time the owner is only occupying the croft because the Crofters Commission has not asked for letting proposals.

Under the Bill as proposed, the owner-occupier has a legitimate expectation – no more – that if sections 19B and 19C are complied with the Crofters Commission will not ask for letting proposals. The corollary is that failure to comply with sections 19B and 19C will result in the Crofters Commission asking for letting proposals.
An owner who is asked for letting proposals is not being deprived of a possession falling under the ambit of Article 1, Protocol 1.

The interference with the expectation under Article 1, Protocol 1 pursues a legitimate aim in that crofting is based on tenancy.

The asking for letting proposals falls to the Crofters Commission.

Right of appeal should be directly to the Land Court. The evidence stacking up against the Stated Case procedure would seem to be overwhelming.

If a knowledgeable and prudent potential purchaser of a croft was fully aware of the restricted right of occupancy and the letting provisions then this could be a factor in speculation.

If the owner-occupier crofter was required to comply with the relevant conditions applying to crofters then much of Part 3 of the Bill would not be necessary to achieve the objectives relating to residency, misuse and neglect and could be dropped from the Bill.

So no Part 3 for crofters and much modified Part 3 for owners who may become owner-occupiers

SUBMISSION FROM JIM NICOLSON

It has been stated how important it is to get this Bill right as it is likely to be the last opportunity for some time. I wholeheartedly agree with the importance of getting it right but though I consider there are improvements from the initial proposals such as the dropping of the unworkable “real burdens” on all residents on croft land and also the scrapping of the devolving of significant powers to Area Committees which would have proved costly, I am unconvinced that the proposed legislation will bring significant benefits to me or my fellow crofters in Shetland.

Governance: I am generally satisfied with the current system and though some improvements could be made I am not convinced that changes require legislation. I feel that the Assessors network is worthwhile and could be further developed but would favour a gradual process of increasing involvement rather than radical change.

Croft Register: I do feel that I must have missed something. For a number of years now I and, as far as I am aware, most if not all of my crofter colleagues in Shetland have completed IACS forms, signed and agreed to maps indicating the location and hectarage of the crofts which they occupy. Surely it is not beyond inter-governmental co-operation to use this information to provide a most substantial basis to a Croft Register. No costs, therefore, would need to be levied on those who have participated in the IACS process.

Absenteeism and Neglect: I do not believe that there is a serious problem with absenteeism and neglect in Shetland though I appreciate that that situation may not be mirrored elsewhere. I believe that the Crofters Commission already has powers,
Agenda Item 2

certainly regarding absenteeism, and indeed is, I understand, making use of these powers at this time.

Owner Occupiers: I would support equalising arrangements for tenants and owner/occupiers. I do not believe that most owner/occupiers would be any more likely to wish to remove ground from agriculture to development than most landlords.

Family Succession: I strongly oppose any proposal to discontinue family succession which is regarded as of great importance by many crofters.

Finance: Though I did not approve some of the proposals made by the Shucksmith Inquiry, there were in that document some positive financial proposals, none of which appear in this Bill.
I would have hoped, at least, to have seen proposals for much greater support for Crofter Housing and a reinstatement of the Young Entrant Scheme.

General: I do not believe that the Crofting Reform (Scotland) Bill will do much to tackle the major challenges which crofters are likely to face in the coming years. I will be making a separate submission on the Pack Report but I feel that the proposals of that document which will have a massively negative effect on the large majority of crofters can not be ignored in the context of crofting as a whole. A significant drop in Single Farm payments which crofters would be likely to face if the Pack proposals are implemented along with increasing bureaucratisation, EID, penalties if rules which are sometimes unclear are not complied with, could result in more crofters leaving the industry and few young people willing to take on uneconomic units.

The Pack Report focuses almost entirely on production. I believe that crofts should be productive but also can make most important social and environmental contributions. It is saddening that, not just Pack, but also other initiatives such as SRDP are much more appropriate for larger farms than smaller crofts. As an example, some 80% of the 1000+ crofts in Shetland participated in ESAs, not just bringing in welcome financial support for crofters but also making a real and substantial contribution to the environment; some 5 – 6% of crofts in Shetland have gained entry to SRDP.

I feel that much more recognition should be taken of the remoteness of many of the crofting areas and that LFA payments should reflect that rather than the distorted system which is currently in place. It is surely perverse that in the UK only the Scilly Isles receive the payments for island status which are allowed under EC rules.

In conclusion, I believe strongly that a sustainable future for crofting is essential for the well-being of our more remote rural communities. We need, however, to be able to attract more young people into the industry but that is going to be increasingly difficult without effectively targeted financial support. That is the real challenge that needs to be tackled and without which the proposals of the Crofting Reform Bill pale in significance.
Many thanks for the chance to give evidence to the RAE Committee yesterday in Lerwick. I thought that it might be helpful if I tried to briefly summarise the main points that I made in a slightly more coherent form -

Part 1 - no comments

Part 2 - no comments

Part 3 - (w.r.t. duty not to misuse or neglect croft) As drafted these measures may be difficult to enforce. In particular terms like "natural beauty of the locality" and "flora and fauna of that locality" are open to a range of interpretations. Furthermore what may be considered a reasonable requirement is likely to change over time as access to public funding support changes, environmental and climate change priorities evolve, etc. An alternative approach might be to place a statutory duty on crofters to make purposeful use of the croft, and then place a statutory duty on the Crofting Commission (in consultation with local authorities and other public bodies) to publish and keep up to date guidelines as to what it considers to be purposeful use. I suggest that monitoring/enforcement might be best achieved by placing a statutory duty on the Crofting Commission to publish a procedure whereby individuals and organisations may notify the Commission of possible breaches by crofters of the purposeful use duty, and a further duty on the Commission to investigate and take action if so notified.

Part 4 - (w.r.t. consideration of decrofting directions) As drafted this may lead to conflict with local authority planning functions and may be unnecessarily cumbersome. It may give the Crofting Commission what amounts almost to an effective veto over planning applications on croft land, and as such may not ensure that such decisions fully take into account all relevant public interests. An alternative approach might be to make the Crofting Commission a statutory consultee at Local Development Plan stage and at planning application stage, with cases being referred to Ministers for final decision where a planning authority is minded to go against the advice of the Crofting Commission. This would mirror procedures for potential development on land designated for nature conservation purposes (where SNH is the statutory consultee), and would ensure that the eventual decision was made on the balance of all relevant public interests.

Part 5 - no comments

Schedule 1 - As drafted this creates a strong voice on the Crofting Commission for existing crofting tenants, but it may underrepresent wider local community interests - in particular the interests of those who would like to become crofters but have not so far been able to obtain a crofting tenancy. It may be worth considering what lessons might be drawn from the National Parks legislation, in which local community interests are represented by inviting local authorities to nominate a proportion of Board Members. I would also like to suggest that it may be worth enabling Ministers to advertise for and appoint the Chair in a manner that enables applications from both within and outwith the current membership of the Board - more likely to attract a
range of candidates with the necessary leadership experience. This is the case (for example) with SNH.

Andrew Thin
Chairman
Scottish Natural Heritage
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.

**Agriculture and Fisheries Council**

The Cabinet Secretary for Rural Affairs and the Environment has provided a short report on the Agriculture and Fisheries Council meeting which he attended in Brussels on 22 February. The report can be read online at:


**Sea Fisheries Negotiations**

The Cabinet Secretary for Rural Affairs and Environment has also provided a report on the annual negotiations between the EU and the Faeroe Islands, and the EU and Norway. The report can be read online at:


**Higher Activity Radioactive Waste Consultation**

The Scottish Government has launched a consultation on the Detailed Statement of Policy for Scotland’s Higher Activity Radioactive Waste. The closing date for responses to the consultation is 9 April 2010. More information about the consultation is available online at:

http://www.scotland.gov.uk/Publications/2010/01/14151255/0

**Consolidation of Waste Management Licensing Regulations**

The Scottish Government has issued a consultation on proposals for the consolidation of the Waste Management Licensing Regulations and associated documents; amendments arising from the Better Waste Regulation consultation exercise; the transposition of the revised Waste Framework Directive; and the amendment of legislation relating to waste carriers. The closing date for responses to the consultation is 21 May 2010. More information about the consultation is available online at:

http://www.scotland.gov.uk/Publications/2010/02/23140430/0
**EU Dairy Fund**

The Cabinet Secretary for Rural Affairs and the Environment has announced details of how Scotland's share of the EU Dairy Fund will be allocated. The accompanying news release can be read online at:

http://www.scotland.gov.uk/News/Releases/2010/03/04111851

**Meat Hygiene Service**

The Cabinet Secretary for Rural Affairs and the Environment has written to inform the Committee that the executive agency status of the Meat Hygiene Service is to be dissolved and its staff and functions brought into the Food Standards Agency to form the core of a new Food Standards Operation Group. The Cabinet Secretary’s letter can be read online at:


**Scottish Agricultural College report**

The Scottish Agricultural College has produced a report entitled “Rural Scotland in Focus”. The report can be read online at:

http://www.sac.ac.uk/mainrep/pdfs/rsifreport2010.pdf

**Brussels Bulletin**

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