RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

9th Meeting, 2010 (Session 3)

Wednesday 14 April 2010

The Committee will meet at 10.00 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—
   
   the Water Quality (Scotland) Regulations 2010 (SSI 2010/95); and
   
   the Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (SSI 2010/100).

3. **Work programme:** The Committee will consider its work programme.

4. **Crofting Reform (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

**Agenda Item 2**

The Water Quality (Scotland) Regulations 2010 (SSI 2010/95)  
RAE/S3/10/9/1

The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010 (SSI 2010/100)  
RAE/S3/10/9/2

Extract of Subordinate Legislation Committee report  
RAE/S3/10/9/3

**Agenda Item 3**

Paper from the Clerk (private)  
RAE/S3/10/9/4

**Agenda Item 4**

Draft report (private)  
RAE/S3/10/9/5

Submissions pack  
RAE/S3/10/9/6

**For Information**

Recent Developments  
RAE/S3/10/9/7
INSTRUMENTS SUBJECT TO ANNULMENT

The Water Quality (Scotland) Regulations 2010 (SSI 2010/95) *(Rural Affairs and Environment Committee)*


2. The exercise of the powers under section 2(2) of the European Communities Act 1972 (by paragraph 2 of schedule 2 to the Act) permits a choice of draft affirmative or negative procedure. The choice is one for Ministers, but in exercising that choice the Parliament expects Ministers to take into account the nature of the legislation made in each case and the desirability of an appropriate level of parliamentary scrutiny.

3. In oral evidence to the Committee at its meeting on 2 March 2010, the Minister for Environment acknowledged that “it is the convention for statutory instruments that amend primary legislation and create new offences to be subject to affirmative procedure”.

4. It is, as the Minister acknowledged, normally the proper legislative practice or convention that where such an instrument amends primary legislation and creates new offences, a choice of affirmative procedure usually provides for the appropriate degree of Parliamentary scrutiny of the proposals.

5. However, in this instance, the Scottish Government determined that negative procedure should be applied. The evidence session with the Minister explored the reasons behind this decision, and provided an explanation of the reasons why negative procedure required to be selected in this particular case.

6. The Committee therefore reports that this instrument does not follow the normal legislative practice. While there is a choice of draft affirmative or negative procedure available under paragraph 2 of schedule 2 to the European Communities Act 1972, the exercise of powers under section 2(2) of that Act, which include amendment of primary legislation and the creation of new offences, should normally select draft affirmative procedure as appropriate for parliamentary scrutiny.

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7. However, the Minister for Environment has explained why it was required to choose negative procedure in this case. The Committee draws this to the attention of the lead committee accordingly.
The following supplementary submission has been received since the Committee's meeting on 10 February:

Scottish Crofting Federation........................................................................................................................................2

The following submission has also been received:

M.S. Murray and M.M. Murray........................................................................................................................................5
SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH CROFTING FEDERATION

The Assessors, the Commission and the Register – the three legged stool of crofting

We appreciate that you have finished taking evidence on the Crofting reform bill but would beg the indulgence of the committee in letting us summarise our further thoughts on what we consider to be vital to the success or failure of the Bill and subsequent Act.

Summary points:

- The role and responsibilities of elected Assessors in regards to their communities and the Crofters Commission must be expanded, be clear and placed in the Bill;
- The Crofting Commission power balances need to be addressed and the convenor must be elected from and by the commissioners;
- The proposed Register of Crofts being compiled by RoS using ‘trigger points’ would be very damaging and must be replaced by legislation directing that the Register of Crofts held by the Crofters Commission Administration be completed and maintained by them, supported by a community-led model of township development plans;
- These three ‘legs’ are inter-dependant and complementary and must be integrated for each and all to work.

Assessors

The Assessors are by and large trusted and recognised in their communities but must be elected by their communities to have complete acceptability. In the past nominations were sought from Grazings Committees/Clerks and a civil servant selected from these nominations. The SCF was involved in a reform of the network and now Assessors are elected, but the selection process still goes on in some instances. It is vital that Assessors are elected on a parish or area basis by registered crofters or a nominee on their behalf and resident within the registered crofter’s household, this to be set out in detail to our satisfaction prior to implementation.

The present situation where the Assessors are ‘controlled’ by a civil servant must stop. The Assessors will report directly to the Commission and will be the township-level advisors to the Commission Their role and responsibilities should be clearly defined and enshrined in the Bill - especially their relationship with the Commission and their responsibilities to their communities - as they are an integral part of the governance of crofting.

We suggested a model whereby the elected Assessors could nominate persons from within their number to stand as commissioners. However, the Minister is insistent that commissioners should be direct elected by crofters and we have no objection to this
(though Assessor nomination could be a valid stop-gap until the voting system and
election of commissioners has been established - it being predicted that the creation
of an electoral role will take some time). But the aim for direct election is accepted
and our further assertions are therefore based on this.

**Crofting Commission**

The elected commissioners should be area specific and should therefore be elected
by area – i.e. the nominations and vote for a commissioner should be in and by their
defined area.

We agree that the election should be based on the Register of Crofts and that it is
therefore essential to complete the current register (which would be the only Register
of Crofts). However, we suggest that nominations to stand, and voting should be by
one member of the registered croft’s household, not just the ‘registered crofter’. This
would help to address the gender question the committee has raised. There should
be one vote per crofting household regardless of the number of crofts held.

The commissioners will be advised by their Assessors who will also be elected by
their community on the same basis.

The convenor of the commission must be elected from and by the commissioners.
The argument put forward by the Minister that the relationship between the Minister
and the Convenor should dictate that the convenor is appointed is weak; the
relationship between the convenor and the commissioners is more important and
therefore the case for the commissioners electing their convenor is the stronger.

Commissioners need a better time balance with convenor i.e. the present
apportionment of time between the commissioners and the convenor does not work
well, commissioners not having enough time to do their job and the convenor having
too much say in the affairs that all the commissioners should be dealing with. This is
something for the commission to decide upon when it is formed, but the power for
them to do this needs to be in legislation.

The Crofting Commission must have the power of tribunal in order to protect
commissioners from possible legal action against them as individuals.

**The Register of Crofts**

The logic is that if the Crofting Commission is to be direct elected by crofters then
there must be a complete Register of Crofts, which can be used for the basis of an
electoral role. The Crofters Commission holds a Register of Crofts and this should be
completed. It will be the basis of an electoral role and will be the definitive Register of
Crofts. As a previous government proposal (to make it possible for banks to become
croft tenants and maximally exploit their holdings) has been withdrawn, there is no
need for any other register of crofts. Current Commission administration must be
resourced to complete this task with the utmost urgency as this is vital to any
democratic process of election of Commissioners and Assessors. This register is
enough as a minimum and is all that has been asked for by crofters. Expectations of
the Crofting Commission regarding the Register must be clearly laid out in the Bill.
Mapping of crofts is a different issue. The whole concept of compulsory maps directed by the Registers of Scotland under a ‘trigger points’ system is poorly conceived. We won’t go into the rationale for this accusation as the committee has heard plenty, but we do emphasise that we believe that this system will not bring any good to crofters and that the architects have not fully thought through the implications of their plan (though it is interesting to note in Iain Dewar’s letter to the committee that he defends against the suggestion that disputes could arise in the government mapping of the common grazings by saying that it will be mitigated by the use of participation – something left out of the ‘mapping of crofts by trigger point’ proposal).

Having said this, we do agree that mapping of crofts has some validity in the right context, but should be done as a community development exercise by those communities who wish to. Mapping of crofting townships is a development issue which should come under the HIE township development plans initiative and it is this that should be resourced and supported.

The information gathered under such an exercise is the property of the community and of the individuals in that community. It should be entered on to the Register of Crofts only if this is requested by the community or individual and this Bill should make it the duty of the Crofting Commission to do this, should they be given the information (there were some mapping exercises carried out, the CC had the information, but as far as we know it has never been recorded on the register).

The right to not be mapped must be upheld – some communities will not wish to participate in a community mapping initiative and it is their right to not do so. Many crofting communities are happy enough with their knowledge of boundaries and the passing on of this information in an informal, but no less valid, way.

Finally on this point, when asked ‘why RoS?’ the government response has been ‘the Level of expertise’. This is not good reasoning in a time when community development and capacity building is advocated. In fact there hasn’t been any good reason put forward for why RoS would need to keep a register of crofts. The Crofting Commission is the only agency with an interest in this process and there is no requirement for RoS to be involved.

**Conclusion**

Our previously stated and well rehearsed concerns about croft viability, the lack of investment in crofting, the competence of the Crofters Commission and the general weakness of the Crofting Reform Bill aside, we believe that the points raised above could, if taken together as an integrated approach, enable the Bill to do some good to crofting. If ignored, the bill will on balance surely be damaging to crofting.

1 April 2010
SUBMISSION FROM M.S. MURRAY AND M.M. MURRAY

Following a recent discussion with Neil Macleod, Chair of the Scottish Crofting Federation (SCF), it was agreed that we should prepare this submission, for onward transmission to the Committee Panel taking evidence on the implementation of the proposed Crofting Reform Bill. This submission contains relevant crofting information that clearly vindicates not just our views, but also those of many others, including notably those published in recent weeks in the West Highland Free Press (WHFP), a Skye and Lochalsh based local Highland newspaper covering the West Highlands and Islands. Brian Wilson, a former Westminster Parliamentarian, was one of the founder members of this publication, and has always maintained strong beliefs in the crofting culture and way of life, while being equally scathing in his condemnation of the negligent, and very often questionable methodology of those entrusted with the “future of crofting” to control the blatant exploitation of, and speculation upon, crofts and crofting land. We are giving an example of croft speculation in this paper.

The committee should therefore take account of the articles by Brian Wilson, as published in the WHFP. (One of these articles is available as a pdf.doc on the SCF website). The views of the SCF should also be taken on board, because we know these to be broadly in line with this submission, on this subject.

One of HIE’s recent crofting proposals to Highland Council, also deals with topics not too far removed from these issues, and we suspect they would also put their weight behind this document.

In this submission, however, we are suggesting a methodology that we fully believe would be successful if implemented, at all levels and in all regions of crofting. Indeed, some such methodology, and control, is necessary and crucial, if crofting culture is to survive in any shape or form, before it is consigned to the “Do you remember” historical anecdotes in local rags.

We are also very concerned about the Local Authority’s seeming inability to distinguish between crofts, and other land, when assessing and deciding upon planning applications, and about how they pay no relevance whatsoever to crofting law or regulations in their decision making, even to the extent where dangerous planning precedents could be set for croft tenancies because of their seeming inability to recognise the danger signals when these are presented (and identified) to them.

The Crofters Commission is currently considering an assignation application for a croft tenancy, which has recently been burdened with full planning permission for controversial development plans, [which the prospective tenant had submitted to planning himself, despite not being in possession of the land,] and which were approved by the Local Authority, clearly ignoring (and seemingly unconcerned about) the danger signals for local crofts, and crofting, that were identified to them before they decided upon this Planning Application. The prospective tenant (being the sole bidder for the croft) had already stipulated he would not purchase the tenancy, unless it came complete with full Planning Permission for the plans which he himself had submitted to planning, and so this applicant – who has not even been assigned this tenancy yet – has already clearly demonstrated that the building / business
development potential of the tenancy completely over-rides any importance or relevance attached to the crofting or agricultural capacity of that croft.

This is a matter of grave concern, because an extremely dangerous precedent would be set, if the assignation – complete with the proposed development plans – was approved in full by the Crofters Commission. It would have the potential to theoretically open the floodgates to tenants across the crofting areas, whether newcomers or existing tenants, to likewise over-develop their crofts, because if one such controversial mass development is approved by the Commission, then the runaway train will already have left the station, and – having consented one such application – it would then be difficult, if not impossible, to refuse any similar future applications. A standard would have been put in place against which all such applications would be judged. That would be a disaster for crofts, and crofting, and would have the potential to create urbanised landscapes in crofting settlements that would permanently alter, even destroy, the crofting cultural heritage of each settlement.

The crux of the matter is that such developments rarely, if ever, have anything to do with, or to contribute to, crofting or the local environment. We are talking here about utilising good crofting land to establish assorted dwellings, buildings, and “businesses” that could just as easily be set up on any plot of land, in any township, perhaps even on plots of land specifically set aside – or earmarked by the Local Authority, or Grazings Committees, for that specific purpose. Or perhaps even by the Landlord. But to speculate upon good croft land within a village settlement in this manner is unacceptable and – if consented – would set a very dangerous precedent.

Croft tenancies, when advertised on the open market, are done so with a price tag that almost immediately prevents any aspiring young local crofters or families from expressing an interest, or making an offer.

The afore-mentioned tenancy was advertised for sale (on the internet) through an Estate Agent, asking for “Offers over £25,000”. We know that several local crofters inspected the croft, but were obviously unable to raise the asking price, or alternatively they could have considered the croft was not worth the asking price, and so did not place any offers.

Unfortunately, we also hear of how one young local crofting family’s interest in the croft was quickly snuffed out at the start, because of the extortionate price being asked for it. The Estate on which this tenancy is situated was the subject of a “Community Buyout”, and was purchased in its entirety for £600,000 plus legal fees and outlays, although the actual valuation of the land fell short of that figure. The estate is approximately 55,000 acres. And it has 614 crofts, (of varying acreage), plus some large swathes of machair, and moorland common grazings. Therefore, it does not require a degree in mathematics to very quickly gauge that a £25,000 price tag for just one of the 614 crofts clearly indicates that something is seriously amiss, and that money is being asked for a **croft tenancy** that is quite astonishing, and way off the mark.

Local crofters, unless in some ancillary highly paid employment, would never be able to meet that kind of price for a bare-land croft, and, in any case, it would then take
them many more years before they could save enough to build their home on that croft. Meanwhile, they would have to live in and pay for accommodation in some other location.

However, as happens elsewhere, there are individuals living out-with the crofting areas, seemingly with funds to match such grossly inflated prices, who speculate upon crofting lands right across the crofting counties. We do not object to diligent incoming new tenants from non-crofting backgrounds who are prepared to knuckle down and actually live on and work the land. Indeed they are very welcome, but unfortunately – as in other crofting areas – these are in a minority.

Clearly then, we have a fatally flawed system that has witnessed, sanctioned, and failed to control the wholesale profiteering from the sale of croft tenancies which has escalated out of all proportion to the actual value of the land being sold, allowing crofts to fall into the hands of better-off (generally incoming) speculators whose only interest in the croft is for its commercial development potential value, while the croft itself is purely and simply the instrument for facilitating such plans. If all applications are scrutinised and processed by the Crofters Commission according to the letter of the law, how then could this situation have arisen? How has the Crofters Commission allowed this situation to develop in the first place, when their remit is to protect crofts and crofting lands, the crofters who live on that land, and the law and legislation that is supposedly in place to safeguard the land for its intended purpose – i.e. crofting? How are crofting tenancies allowed to float on the open market, with asking prices that instantly put these completely beyond the reach of aspiring local youngsters or couples who want to work, and live on a croft in their own areas?

These young people often have no alternative but to relocate to the towns and cities, and the suburbs and urban areas, because all the available crofts in the rural areas are invariably snatched up by much wealthier people, often (nearly always) from non-crofting backgrounds, and generally from non-crofting areas.

This has already created, and continues to create, a damaging transposition of culture and heritage, as young local people from crofting backgrounds – who are unable to raise the funding to buy any of the croft tenancies for sale locally – relocate to urban areas closer to their main employment, while the croft tenancies are simultaneously taken over by tenants from outside the crofting area, usually with no connection or affiliation with the area. The culture and heritage of these crofting families is gradually but inexorably being transposed into – and lost within an alien urban area, while a different and often transient mix of new alien cultures replaces it in the crofting settlements.

While there is sufficient provision and allowance for general culture interchanges to take place in all societies, a very special crofting culture, and heritage, and way of life, is now under threat. The identity of every indigenous crofting family is at risk. The extraordinary heritage we inherited from our predecessors, who fought against all manner of hardships to create and maintain these crofts, must be protected. This means the land, for the most part, must be made available to locals from these crofting areas, before it is ever allowed to reach the open market.

We have several suggestions that could enable that to happen, but which would require Government financial intervention and assistance to prevent the land from
being floated on the open market, thereby compensating the genuine out-going tenant for being unable to raise perhaps what he had hoped for, particularly when compared with tenancies that were previously sold at such ridiculously inflated prices. This would be a much fairer system than simply subsidising the incoming “new entrant” who could, under the old scheme, be from any background, or any area.

We would propose that all croft tenancies offered for sale should initially be valued according to the value of croft-land locally, (with land quality taken into account). This would ideally be best done by an independent valuation expert employed by the Government’s Agricultural Department, as that would remove any potential local issues.

All croft tenancies would then have to be offered, at that valuation price, initially to that local township only. If there was no local township interest, the tenancy would then be advertised within that wider local crofting area. If there was still no interest, perhaps it should be advertised yet again, through the entire Crofting Counties, before it was finally – as a last resort - allowed to be advertised on the open market, at which point the Crofters Commission should be entitled to intervene in order to ensure that the crofting future of that tenancy was assured.

If that process was rigorously followed and adhered to for all croft tenancies being sold, it would prevent the vast majority of them from ever being floated on the open market, and from being subjected to the speculation and exploitation that this open market encourages.

If at any stage of this process, there was interest from more than one party for a croft or tenancy being sold, perhaps the final decision should rest with the Crofters Commission, who would be comprised of mainly elected crofting personnel, and who would take the views of the local Assessors and their legal advisors fully on board to enable them to reach a satisfactory decision. We don’t believe it would be in any way fair, practical or feasible to burden any Grazings Committee, or any other local Committee, with such a potentially life-changing decision, as the result would inevitably only please the successful party, and almost certainly generate much local discord and dissention amongst others in that community.

However, because the out-going tenant would very likely see a major drop in the income he had expected to receive from the sale of the tenancy, particularly when compared with the grossly inflated prices presently commanded on the open market, some kind of compensation scheme should be put in place to compensate him for his loss. Importantly, compensation would only be paid once for any croft tenancy being sold, and so if that tenancy was sold again it would be re-valued (if necessary), and offered as before at that valuation price to locally interested parties, but with no compensation payable to the out-going tenant, because he would only have paid the reduced valuation price on purchase. This would inevitably, over time, ensure the sale price of croft tenancies was much more in line with the actual value of the land being sold, while simultaneously making resale of the tenancy an extremely unattractive option, as the profiteering element would have been removed.
Compensation schemes could possibly be weighted, according to whether the tenancy had been worked and maintained for many years, or whether it had only been recently acquired, and was being sold on again.

The croft that had been worked and cared for, over many years, should – ideally – have a higher compensation value (*for the out-going tenant*) than a croft that had only recently had a change of tenancy – particularly if that change of tenancy had been speculative, and was now being offered for sale complete with one or more new buildings, all of which may have been developed simply to enhance the re-sale value of the croft. The tenant, in such a case, would obviously have bought and developed that croft simply to profit from its development and/or resale potential.

To prevent the escalating speculative aspect of that kind of sale from achieving grossly over-inflated proportions, and potentially destroying any possibility of that croft ever returning into proper or local crofting use again, perhaps there should be a requirement to de-croft such a house site (or sites) before sale, particularly where the construction of (*and profit from*) that property was the only reason for having bought that croft in the first place, and where the actual croft itself was merely the instrument for facilitating such construction. [In other words, where a croft was bought, and used simply to provide the site(s) for property that could just as easily have been constructed on any other de-crofted site or plot of land, anywhere].

Legislation would hopefully be in place, by then, to prevent that out-going tenant from selling the croft on the open market, and it would, instead, be subjected to land-valuation and offered to the local township, as before. Under such circumstances, where profiteering was the motive, and where there were no extenuating circumstances, the seller would only be entitled to the valuation price of the croft, regardless of what he had paid for it (unless he had actually improved and consolidated its value through improvement works, such as access, fencing, drainage, agriculture, etc while under his tenancy, to an extent that such works would justify their inclusion in the croft valuation).

The matter of de-crofting plots of land on a croft, to sell on the open market as potential development sites, is also a matter of some concern, particularly if that activity follows shortly after the croft tenancy itself was assigned to the new tenant. Such sites are often sold at astronomical prices, and it’s quite possible for the new croft tenant, selling just one such site from his newly acquired croft, to instantly recoup the entire financial outlay expended on purchasing the croft itself. Surely this is morally unacceptable, regardless of the legal position? And surely the Crofters Commission, if regularly consenting such practices, must examine the yard-stick by which they approve and condone any applications that do not stand up to the closest scrutiny? Why is the site being de-crofted? Who is going to live there? Why? What will happen to the property, once built? Will it be sold? Can legislation be put in place to prevent such sites and/or properties from being sold within a stated number of years? If not, how is the profiteering element from de-crofted sites ever going to be controlled?

There are occasions when de-crofting a house site on a croft is in order, both within the boundaries of crofting law, and historically, such as the provision of a house site for a member of the family; or de-crofting the site of the original croft house in order
to assign the croft tenancy itself to a family member. There may well be other occasions, if acceptable to both the neighbours and the Grazings Committee, such as when an established crofting tenant might wish to give (for an agreed fee perhaps) a ¼ acre feu to a friend or relative, as long as the viability of, and access to the croft was not jeopardised. Provided the segmentation of the croft was controlled and within decent parameters, and the croft’s capabilities and output was not affected, then there could be some merit to providing a site for another home on a croft, where that would be the occupant’s main home, and preferably where the occupant was known or related to the tenant, or neighbours.

There may well be many other occasions where de-crofting of sites is acceptable, and perhaps even necessary, but the general consensus is that the application rate for this sometimes questionable and often suspect practice has also gathered pace, like the runaway train, and may prove equally difficult to stop or control legislatively. But there must be a regulatory standard that should apply in all cases, to prevent mass de-crofting and / or the construction of multi-building developments on a croft. While not all crofts are equal, and not all crofts are the same acreage, there must still be guidelines put in place to PREVENT wholesale exploitation of croft land for business / profit, because unless this is done crofts will continue to be targeted for building developments, and then broken up when these are sold, leaving what’s left of the land in a damaged and degraded state, unfit for crofting or agricultural production.

Clearly some kind of restrictive regulation and legislation is required to stop the speculation and exploitation of crofts, once and for all. At the same time the genuine out-going tenant who has improved and maintained his tenancy may well be entitled to receive more than the basic land valuation for his croft, and so Government aid should be introduced at that point to compensate him for any losses he may have incurred through making that croft available to local interest at a reduced price, in comparison with the ridiculously inflated prices commanded on the open market, and which other tenants had previously received for the sale of their tenancies.

This kind of intervention, PARTICULARLY if put into place alongside an enhanced Crofting House Grant and Loan scheme, would make crofts genuinely accessible for the next generation of crofters and their families, and, along with an incentive and encouragement to build their home on that croft, would ensure that the crofting settlements remained viable, and retained their young population, and their culture and heritage, while at the same time preserving and protecting a priceless inheritance and way of life.

There is much talk at present about how the Crofting Commission intends to lean heavily on “absentee” tenants, without at any time explaining how they intend to go about this, or what would happen to the crofts vacated by the absentees. We submit that the Commission, and the Government, must take a big step back from this proposal, and actually think long and hard about the potential damage that such mass evacuation/eviction of tenants from crofts right across the land would do.

Yes, there are absentee tenants who have no interest in either their crofts, or their heritage, and may never have even set foot on the croft. But we submit these are in a clear MINORITY. The MAJORITY of “absentee” tenants are classified as
“absentees” by the Crofters Commission simply because they do not actually live on their crofts most of the year, without establishing why this is so. Most of these absent tenants are actually doing many other crofters a favour, by sub-letting their tenancies to them meanwhile, ensuring the land is kept in good heart, while the tenancy remains safe and secure until such a time as the tenant can return “home”. He is usually absent from home because of his work, or other family commitments, but most of these people fully intend to return to live on the land that their predecessors worked very hard to secure and maintain. That is surely their birthright, and provided they are not depriving anyone else of the same right to live on that land, it would be very unwise to remove them, depriving them of their rightful inheritance.

Then there is the matter of the vacated crofts. Would these be advertised and floated on the open market as before? Depriving locals, once again, of any opportunity to purchase these tenancies at an affordable price, and at the real land valuation? Once again leaving the field open for the speculators to move in, and then move out again, taking their profit with them.

Why not simply sub-let all the crofts where the present tenants, who – while physically unable to actually live on these crofts meanwhile – do remain the rightful heirs to their inheritance, and fully intend to return “home” at a later date? Is there not a particular danger of invoking elements of the Human Rights Acts, and even the Indigenous People’s Charter, if the rightful inheritors of family tenancies are forced off their property, without having actually broken any laws?

We could envisage many opportunities for such “evacuees” to raise legal cases against the Government, if they had deprived them off their rightful inheritance, and that would be extremely damaging, not just for crofting, and those living on the land, but importantly for the Crofting Commission and all those whose role is to act as official CARETAKERS and legislators of our land. If the land is already being worked and sublet to another crofter, it must be remembered that this crofter is also going to be deprived of land essential to his business. Therefore, the Commission must take great care to define and identify absenteeism, and not to confuse it with NEGLECT, which is a completely separate can of worms, and which does require attending to.

However, we submit that the same criteria for making the land initially available at the valuation price to the local township must also apply where any tenant is being forced off the land for having neglected his property, to ensure that this land is also safeguarded from speculation.

It is also important though to consider the crofters already living on, and working the land, particularly in remote hill areas, and the Islands off our coast. It is important to understand the conditions under which they have to croft, and the extortionate prices that some island crofters have to pay, for the same products that are available for nearly half that price, or less, to mainland crofters and farmers. Currently each 4x4 round bale of hay costs £42 to import, while small hay bales sell at nearly £6.00 each.

Because the previous scheme which subsidised feed hauliers was scrapped when RET was introduced on the ferries (which entitled that one leg of a return journey was free) the actual cost to the crofter is now greater since RET was introduced, than
before. Clearly this is the result of insufficient attention to detail at the time, but the whole scheme has to be urgently reconsidered if offshore crofters have any hope of ever competing with their mainland counterparts on a level playing field.

We submit, therefore, that there has to be some additional incentive and encouragement for today’s crofters to REMAIN on the land, and continue in crofting, when faced with such crippling costs.

A scheme to encourage retention of quality breeding ewes should be considered, as a matter of extreme urgency. During the Integrated Development Programme (IDP) scheme some years ago, an “Untupped Gimmer” scheme ran for several years, which did more than any other scheme to encourage crofters to breed good foundation stock and to retain the best animals within their flocks. Each approved and qualifying gimmer attracted a special payment, but the scheme could now perhaps be introduced [at year 1] for ewe-lambs and gimmers, and thereafter based on quality ewe-lamb retention instead – perhaps with an additional financial incentive to retain these as gimmers in the breeding flock, thereby ensuring the qualifying ewe-hoggs were not discarded or sold on as prime fat stock after being approved.

There could also be a financial incentive for some local breeders to breed and supply the local market with well-bred rams, and/or quality replacement stock, as this would also play a significant role in improving the sheep stock, by providing locally well-bred animals, which would already be well acclimatised to the prevailing local conditions, and where the buyer could see the dams and sires of animals bought. There are good stock-keepers and breeders in crofting areas who have – often at some major cost to themselves – diversified into breeding ‘other breeds’ as well as the traditional native Blackface, and today’s market demands these heavier breeds, both as terminal sires and as breeds in their own right.

We have no doubts at all that those schemes, if properly implemented and made accessible to all crofters, would be an overnight success, and provide security and a real life-line to those who have persisted against all the odds to remain in crofting over the recent lean years, while simultaneously offering a worth-while incentive and encouragement for young crofters to establish (or improve) their own flocks. Crucially, it would also ensure that crofting lands were used productively.

This would also make a significant difference to the crofting landscape, the crofting way of life, and the crofters themselves, as well as improving the crofting sheep flocks, and breeds, across the Highlands and islands.

We would recommend that such schemes should be run by the local Field Officers, through the Area Agriculture Offices. These officers have a thorough knowledge of the land, and the people on the land, and are ideally placed to undertake the implementation of such schemes. And many of them will already have had first-hand experience of working within the IDP schemes, and – with hindsight experience – would be the best personnel to establish, and identify, how these new schemes could be introduced, and operated.

M. S. Murray & M. M. Murray
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.

Beet Seed (Scotland) Regulations 2010

The Cabinet Secretary for Rural Affairs and the Environment has written to the Convener of the Subordinate Legislation Committee responding to a letter sent after the Committee considered the above instrument. A copy of the letter is in the annexe.

EU Dairy Fund

The Cabinet Secretary for Rural Affairs and the Environment has written to the Committee regarding the introduction of a UK wide statutory instrument by DEFRA, allowing for the recovery of any overpayments made by the Rural Payments Agency when administering the EU Dairy Fund. The letter can be viewed online at:


European Environment Council

The Minister for Environment has written to the Committee about the outcome of the European Environment Council meeting in Brussels on 15 March. The Council unanimously agreed its conclusions on biodiversity, committing the EU to halting further biodiversity loss by 2020 and setting out its longer term vision up to 2050. The letter can be viewed online at:


PLANET (Planning Land Application of Nutrients for Efficiency and the Environment) Scotland project

The Scottish Government has launched new software designed to assist farmers in meeting climate change and water quality targets and improve business profitability. PLANET (Planning Land Application of Nutrients for Efficiency and the Environment) Scotland will be widely available from June. Further information can be viewed online at:

Saving with PLANET
Making the Most of Scotland’s Seas

The Scottish Government has published its marine vision document, Making the most of Scotland’s Seas, which sets out a framework for actions to achieve productive and biologically diverse marine and coastal environments. The publication can be accessed online at:

Making the most of Scotland’s seas: turning our marine vision into reality

Special Committee on Seals (SCOS) report

The Sea Mammal Research Unit’s Special Committee on Seals has published its 2009 report which welcomes the Marine (Scotland) Act and provides scientific advice on matters relating to the management of seal populations. The report can be viewed online at:

Sea Mammal Research Unit

SNH Board appointments

The Minister for Environment has announced several appointments and re-appointments to serve on the SNH Board. Further details of the appointments can be read online at:

Scottish Natural Heritage

Bute buyout

Bute Community Land Company (BCLC) received approval to buy Rhubodach Forest under Land Reform legislation. The Scottish Government news release can be read online at:

Bute buyout

HIAL Chair appointment

The Minister for Transport, Infrastructure and Climate Change has announced the appointment of Grenville Johnston as Chair of Highlands & Islands Airports Ltd (HIAL). The accompanying news release can be read online at:

Highlands & Islands Airports Ltd (HIAL)

Brussels Bulletin

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

CORRESPONDENCE FROM THE CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT TO THE CONVENER OF THE SUBORDINATE LEGISLATION COMMITTEE

THE BEET SEED (SCOTLAND) REGULATIONS 2010

I refer to your letter of 18 March 2010. You have asked me to comment on:

- the quality control mechanisms on SSI drafting currently in place and how they were applied to this instrument, and
- the priority afforded to full and proper transposition of EU obligations whether or not the practical effect is of importance for Scotland.

Before turning to these, I must stress that the Scottish Ministers take the making of subordinate legislation very seriously and that we aim for the highest standards in the quality of our drafting.

We accept that these standards were not met in relation to these Regulations and intend to revoke and re-lay the Regulations, having regard to the points made by the Committee, as soon as is practicable.

I should also stress that our Legal Directorate have regular discussions with the legal advisors to the Committee to ensure good levels of communication and understanding of their respective roles in relation to secondary legislation.

The quality control mechanisms on SSI drafting currently in place

The following quality control mechanisms are in place in the Scottish Government for checking the drafting of subordinate legislation:

- The draft SSI is checked by the line manager of the drafting.
- A further check at the final stage is carried out by the head of division solicitor (unless that person is the direct line manager of the drafting solicitor and has undertaken the first check).
- A final read through of the SSI is carried out by another solicitor not in the same division who is a member of the team that checks all SSIs prepared by the Scottish Government Legal Directorate.

How they were applied to this instrument

These mechanisms were applied in this case. However, we accept that we did not pick up of the points identified by the Committee. The reasons are essentially –

- In this case, too little time was left for these processes to be properly carried out. Essentially, the timing of each check was too compressed. There was pressure to finalise the instrument for signature at a time when the system was under pressure because of the number of other instruments also requiring to be signed and laid before the Easter recess.
• The regulations in question are particularly lengthy and complicated and, while accepting that more time should have been allocated to take this into account in these circumstances, this was done effectively.

_The priority afforded to full and proper transposition of EU obligations_

I’m sorry if an impression has been conveyed that this is not the case, but I would like to reassure the Committee that the Scottish Government takes the timeous and complete implementation of all its EU obligations seriously.

I hope that the above is helpful to you and the Committee.

RICHARD LOCHHEAD
CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT
26 MARCH 2010