CROFTING REFORM ETC. BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Crofting Reform etc. Bill introduced in the Scottish Parliament on 2 March 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 57–EN.

POLICY OBJECTIVES OF THE BILL

2. Crofting can and does contribute to many aspects of life in remote rural communities and to the expectations of wider society through:
   - contributing a critical mass of population that sustains services;
   - sustaining a critical mass of agricultural activity to support key agricultural infrastructure;
   - helping maintain land management which would otherwise be uneconomic;
   - sustaining an agriculture that supports many valuable and varied environments;
   - preventing some landscapes reverting to wilderness;
   - supporting a distinctive language, music and culture;
   - putting people who live locally at an advantage over holiday-home and second-home buyers;
   - sustaining community cohesion where it might otherwise collapse.

3. Since the Crofters (Scotland) Act 1993 was introduced, the economic and social context of crofting has changed greatly. There have been changes to agricultural support regimes, greater variability in land ownership and land use in crofting areas, and the emergence of many commercial and community wind farm development projects. Housing that is affordable for young people to live locally has become a dominant issue for crofting communities wishing to retain a balanced and sustainable population. There is a need for crofting legislation that enables crofters to take account of these changes, while securing the particular protection that crofting tenure provides.

5. In July 2002 the Scottish Executive published a White Paper: Crofting Reform: Proposals for Legislation\(^2\) addressing the five main objectives identified by the Land Reform Policy Group:

- more sustainable crofting communities;
- more local involvement in, and accountability for, crofting administration;
- much simplified crofting legislation and administration;
- more (or at least not fewer) active crofters;
- crofters undertaking a wide range of land-based and other economic activity in addition to agriculture.

6. The Bill has developed and taken forward these objectives as follows.

**More sustainable crofting communities**

7. Crofting is important to the vitality of communities in remote, rural Scotland. It is important that the number of people involved in crofting is maintained and, preferably, increased to ensure a critical mass of population, living and working locally. Scottish Ministers have recognised the need to reform crofting legislation to encourage new entrants to crofting and increase the supply of crofts available, thus ensuring the market in crofts is accessible to those who live locally.

8. The Bill will enable new crofts to be created upon application of landowners to enter a holding on the Register of Crofts (section 10). The tenants on those holdings will have the same rights and obligations as current crofters, including the rights to build a house on the croft, to purchase and to decroft the holding.

9. The Bill further encourages the release of land for new crofts by providing that the current contracting-out arrangements, i.e. where a crofter will enter into an agreement with the landlord whereby the crofter contracts out of the statutory right to purchase the croft land, can be binding on the crofter’s successors. This will also apply to any agreement where a crofter gives up the possibility of assigning the croft. By providing this security to the landowner, it is more likely that owners will take action to create new crofts, thus securing a supply of affordable croft tenancies, and homes, for new entrants.

10. The Bill also makes it possible to extend crofting tenure to areas outwith the Crofting Counties (Section 10) so that new crofts can be created and existing small landholders can apply for conversion of their tenancy to a croft tenancy. This will offer the opportunity, in those areas

\(^1\) Available on the SE website http://www.scotland.gov.uk/library/documents-w4/lrpg-00.htm
prescribed by Scottish Ministers, for people to acquire an affordable home, and develop a sustainable and active crofting business.

**More local involvement in, and accountability for, crofting administration**

11. The Bill includes provisions that increase the occasions on which crofters and grazings committees are consulted by the Crofters Commission about crofting policies and provides for the development of local policy approaches. This will offer crofting communities the opportunity to influence the management of the land around them, and strengthen community cohesion.

12. Section 24 reforms the approach to reorganisation of crofting townships. It reduces timescales and allows for more extensive consultation. This change hands over more control to interested parties locally – interested parties being defined as crofters and landlords - and reduces the existing powers of the Scottish Ministers. Ministers will only have a role where the scheme involves acquisitions of land that is not in crofting tenure.

13. The Bill at section 30 also provides for wider use of common grazing land than is currently permitted so that shareholders can collectively take decisions that improve the economic and social benefits derived from that land. Currently, use is restricted to grazing, peat-cutting and crofter forestry. A majority of shareholders, and the Commission, would be required to consent to the introduction of wider use, and the landowner and individual crofters have a right of appeal to the Land Court.

14. The Bill also provides for the creation of new common land which could be used for woodland and other common purposes as well as grazing. Where such land is wooded this would allow new crofts to be constituted as woodland crofts, with an area of woodland associated with the crofting community made available for common use by members of the community, as an equivalent to common grazing land. The woodland croft concept is based on the assumption that all the wooded land will be and might continue to be forested and be managed solely for forestry purposes.

15. Section 32 provides for enhanced regulation of common grazings, through an application by either the grazings committee or landowner to the Crofters Commission.

16. Section 2 of the Bill inserts new section 2A into the 1993 Act which provides for the adoption of local regulatory policies for an area. It is intended that this provision could allow the development of crofting regulation and administration that is most appropriate for a particular area, because of particular social and economic conditions. Local policies could include criteria to be applied by the Commission in considering apportionments, assignations and division of crofts, decrofting, local planning matters, forestry proposals, and new crofts in the area. The Bill deals solely with the mechanisms for determining local policies and places no constraints on what the local policies might cover. The minimum area to which these policies could apply is defined as a township and associated grazings but in practice it is expected that local policies will be developed for and applied to much larger areas.
Much simplified crofting legislation and administration

17. A key goal of the Bill is to update and modernise crofting legislation and administration, to simplify processes that have proved to be cumbersome, time-intensive, and which ultimately frustrate the economic and social aspirations of individual crofters and crofting communities.

18. There is a wide range of provisions in the Bill that adjust the existing legislation to make it simpler and streamlined, some of which close loopholes and address anomalies. The principal provisions, however, relate to the status of the Crofters Commission, its regulatory control and its information management.

19. The Bill at sections 1 to 9 provides for the Crofters Commission to be reconstituted as a non-departmental public body with finance and personnel responsibilities. They will be empowered to make grant schemes subject to agreement of the Scottish Ministers. Providing the Commission with a higher degree of autonomy and flexibility will improve its capacity to deliver a modern regulatory and support service to crofters and crofting communities.

20. Section 5 of the Bill provides for a new regulatory approach that streamlines current processes and, except where there are objections from interested parties, requires the Commission to intervene only where:

- there are clear grounds for concern that the interests of the estate, crofting community and/or wider public interest may be jeopardised;
- the sustainable development of the local crofting community is in question;
- the Commission have reason to believe the information provided in the application is inadequate;
- there are specific circumstances relevant to particular application types, e.g. non-family assignations.

21. Sections 6 to 8 also contain provisions that improve the information management and handling of the Commission, including providing public access to the Register of Crofts and the development of a map-based Register of Crofts. Section 7 of the Bill makes provision for recording additional details relating to croft land and crofters’ rights over land in the Register of Crofts.

22. A number of provisions aim to clarify existing legislation in order to reduce the number and expense of disputes. These include provisions on croft boundaries, holdings deemed to be crofts and vehicular access to crofts. At section 22 of the Bill, it is provided that, where a croft boundary has to be determined (i.e. because the line of the boundary is disputed) the Land Court may declare the boundary to be whatever it considers appropriate. This provision should reduce the scope for expensive boundary disputes and lessen the administrative burden on the Land Court. Consistent with this is provision at section 25 for the 1993 Act to be amended to provide that a holding recorded in the Register of Crofts for more than 20 years is a croft. Section 23 provides that an application can be made by a crofter to the Land Court to identify a route for vehicular access to a croft.
23. The Bill also aims in sections 17 to 20 to address certain circumstances that occur on the death of a croft tenant that currently can lead to a dispute. These include provisions to extend the right of partners to inherit the croft (and not just the croft house), to ensure that the value of the croft tenancy is fairly assessed for the purposes of settling the crofter’s estate, to release the landlord from requiring to pay a claim against the deceased crofter’s estate where the croft is subsequently declared vacant and to deal with intestate succession.

24. The Bill also contains provisions that update crofting legislation to take account of changes in the use of crofts. Section 29 provides that, where a crofter has made improvements required for, or arising out of, a principal use other than cultivation, compensation in respect of these improvements will be only paid to them by the landlord if there was prior agreement that compensation should be paid.

25. Subdivision of crofts is an alternative means by which new crofts can be created. Existing legislation requires the consent of the landlord before a crofter can subdivide their croft. The Bill removes this requirement (section 14) and provides instead a right to object, which can be made to the Commission. The consent of the Commission is only required if such an objection is raised or in circumstances where the application is for the creation of two or more crofts or where the original croft was the consequence of an earlier division.

More (or at least not fewer) active crofters

26. The creation of new crofts is seen to be the most effective means to address current demand for crofts. Demand for croft tenancies has exceeded supply. The problem has been compounded by the current situation whereby it has been possible for existing crofts to be decrofted but not generally possible to create new crofts. While the assignation of croft tenancies is regulated by the Crofters Commission, there is no control over the market in owner-occupied crofts.

27. Because the supply of crofts is limited, this has ultimately resulted in substantial premiums being paid or offered for crofts coming onto the market. There is a concern that this puts local people – particularly younger people – at a disadvantage, as they cannot afford to pay the higher premiums perceived to be affordable by new-comers to these communities. This may compromise the contribution that crofting makes to sustaining community cohesion and a critical mass of population.

28. It is the intention of Ministers to introduce a new definition of “Proper Occupier” at Stage 2 although this is not in the Bill as introduced. It is proposed that this definition would apply to an owner occupier of a croft who meets certain criteria (also to be inserted in the Bill) regarding management and use of the croft. This would remove the anomaly that exists under current crofting legislation whereby a crofter who purchases his or her croft without decrofting becomes regarded as the landlord of a vacant croft. This new definition would ensure that owner-occupiers would only be required to re-let their croft if they were not meeting certain basic conditions. The Crofters Commission could then call upon any owner to make their croft available for re-let. The aim is to ensure that owner occupiers and tenants would be treated equally by the legislation, in the sense that each would have largely the same rights, obligations and incentives to live near to and work their crofts.
29. To ensure that more crofts are occupied and worked, the sanctions for failing to comply with occupation conditions would be broadly, if not exactly the same, in that: if a tenant failed to meet conditions he or she could lose the croft, through termination and re-letting of the croft to someone else; and, if an owner failed to meet conditions he or she would have a tenant placed in the croft.

30. The Bill includes a presumption in favour of family assignations and tightens up the definition of family members. Section 16 removes the requirement that a family assignation must have the landlord’s consent, and replaces this with a provision whereby the landlord, along with other persons specified, has a right to object to an assignation proposal. Every assignation of a croft will be subject to the consent of the Crofters Commission. Unless the assignation would adversely affect the interests of the estate or the public at large or the interests, or sustainable development, of the local crofting community, the Commission is obliged to consent to family assignations. This section also provides for the Commission to intervene, should the assignation be to a non-family member, under certain conditions designed to protect the croft from inappropriate use. These provisions should make it easier for tenants to assign to family members, yet still allow assignation to non-family members.

31. The Bill also includes provisions to encourage the sustainable, but active, land management of crofts.

32. Section 12 of the Bill modifies the conditions of tenure by adding new sections 5A and 5B to the 1993 Act to enable unacceptable neglect or misuse of croft land to be identified and resolved. The Bill also modifies the provisions defining whether the croft is being kept in a state fit for cultivation to comply with rules relating to Good Agricultural and Environmental Condition. The Crofters Commission is also empowered to act in place of the landlord to enforce compliance with conditions of tenure.

33. The historical basis of crofting is as a form of small scale agriculture in parts of Scotland where distance from markets and the quality of land present barriers to intensive, economic farming. However, since 1955, the rural economy has altered considerably as has the context for support. Recent reforms to the EU’s Common Agricultural Policy have recognised the role that agriculture plays in wider rural development. While agricultural activity remains at the heart of crofting, some crofters have already taken up alternative economic opportunities. The Bill aims to encourage and enable more to do so, in order that crofting can remain viable as an economic activity.

34. Financial support to promote the sustainable development of crofts becomes the responsibility of the Crofters Commission in the Bill (section 4). This power enables the Commission to develop new grants schemes that might include support for non-agricultural development.

35. Crofters are encouraged through the Bill to apply for crofter forestry schemes and are provided with the right to appeal to the Land Court should the landowner refuse consent to such
an application. The Bill also permits joint forestry projects involving landowner and crofter (section 30)

36. The Bill introduces a new concept of schemes for development (section 34). This will allow the landlord to prepare a scheme for the construction of a development on the croft land, for example, an energy project, and apply to the Land Court for consent to the scheme. The economic benefits of such a scheme would be shared throughout the crofting community, as the Land Court would apply strict criteria designed to protect the interests of crofters, including fair compensation payment rates.

Amendment to the Land Reform (Scotland) Act 1993

37. Consistent with the expectation that this Bill will contribute to community cohesion it contains provisions to deal with a problem which has arisen in connection with the implementation of the Land Reform (Scotland) Act 1993. Experience with the operation of Part 3 of that Act has revealed that it has been possible for land owners to effectively frustrate the underlying intention of the legislators by use of leases of common grazing land and leases interposed between the landlord and the croft tenant.

38. It has been suggested that the interposed leases may be void, and that can be tested in the courts. However, leases of common grazing land to allow third parties to undertake activities, for purposes which the landlord is entitled to exercise in relation to that land, are also a significant impediment to possible utilisation of such land for sustainable development by a crofting community. This Bill therefore provides at section 35 for the amendment of Part 3 of the Land Reform (Scotland) Act 2003. The new provisions to be inserted in that Act will permit a crofting community body which is applying, or has applied, under part 3 of that Act to buy eligible croft land to apply simultaneously, or within 5 years of completion of purchase of the land, to buy out the lessee’s interest in any lease relating to that land. The process which will apply to that purchase will be essentially the same as that which would apply to the purchase of the land itself.

ALTERNATIVE APPROACHES

More sustainable crofting communities

39. Some crofting interests expressed the view that the Executive should do more in the Bill to address the inflated market in croft tenancies and croft land, by either regulating the price of crofts or constraining the right of individuals to purchase their crofts. The Executive believes that this would be inconsistent with the Bill’s aim of furthering the economic opportunities available to crofters and encouraging new entrants. It also believes that any such measure would prove unworkable in practice and has the potential to operate unfairly against existing crofters. There are also potential concerns about the compatibility of any such measure with the European Convention on Human Rights.

40. An alternative approach suggested was to end the right to assign beyond the immediate family; the objective being to restrict tenancies to local families. This would be out of line with recent changes to agricultural holdings legislation, might also be challengeable under Human Rights legislation and would be unpopular with many croft tenants.
41. An alternative proposal was to require all new croft assignees to go through a 10 year probationary period under certain constraints, including the removal of the right to buy, assign or subdivide their croft. This would discourage investment in and active use of the croft, as well as leave the new entrant exposed to circumstances that other crofters do not face.

42. These, and a number of other proposals that would discourage the creation of new crofts and new entrants to crofting, are in contradiction to the overall policy objectives of the Bill.

**More local involvement in, and accountability for, crofting legislation**

43. The White Paper proposals on common grazing outlined a number of provisions for increasing local accountability for crofting administration. These included empowering grazings clerks to enter into management agreements on behalf of shareholders, empowering grazing committees to purchase grazings shares and distribute them to members, and legislating to allow a grazings committee to be a tenant of a croft. None of these proposals have been taken up in the Bill because it was felt that they undermined the ethos of mutual co-operation currently underpinning common grazings.

**Much simplified crofting legislation and administration**

44. At various stages of consultation individual consultees suggested that more radical simplification could be achieved by abolishing the Crofters Commission thus leaving regulation of tenure to the landlord and the Land Court. However, this approach was not pursued as it would not be in the best interests of crofting or the communities to which crofting is important. Some other consultees argued for a different approach. They were not suggesting an alternative way to achieve the policy objective but rather a completely different policy. They argued for an emphasis on a much more bureaucratic and rigorous system with an end to much of the discretion currently available to the Crofters Commission.

**More (or at least not fewer) active crofters**

45. The proposals in the Bill directed at this objective together with the proposals on “proper occupier” which we intend to bring forward at stage 2 cover the range of possible approaches that could be used to achieve this objective. Some crofting interests have suggested tighter controls over decrofting, division of crofts and the use of croft land for housing and restrictions (including price controls) on sales and assignations. Such measures have not been included in the Bill because they would neither increase the number of active crofters nor compel existing crofters to become more active. What they would do is discourage change and innovation in the use of croft land at a time when agricultural opportunities are changing. Such measures would be likely to reduce the number of active crofters undertaking a wide range of land based and other economic activity in addition to agriculture

46. There are a range of proposals in the Bill intended to achieve this objective and it has not been suggested that the main proposals directed at this goal are inappropriate to the objective or that there are significant alternatives ways to achieve that objective. The only significant issue related to situations where a landlord fails to respond to a request for his agreement to the use of...
land for forestry. It was suggested by some crofting interests that failure to respond should be deemed to signify consent to the forestry proposals whereas the Bill provides that it is to be treated as a refusal. The approach adopted in the Bill was considered to be fairer because there could be a number of perfectly good reasons why a landlord in that situation might fail to receive a request for consent or not be in a position to respond (ill health, holiday, death etc.). The Bill provides an adequate mechanism for dealing with unjustified refusal of consent through court action.

CONSULTATION

47. Consultation on land reform in Scotland – including reform of crofting law – began in 1998 with the first consultation paper of the Land Reform Policy Group, which set out to identify the problems and opportunities which land reform could address. A second paper in the same year set out and sought views on various options for solutions and new measures. Finally, a paper in 1999 set down the Group’s recommendations for action, both legislative and non-legislative. Each of these papers was widely available and the subject of public comment and advice.

48. The Crofting Consultative Panel was set up for the purpose of advising the Scottish Executive on each theme of crofting law reform developed from the Land Reform Action Plan, developed by the Scottish Executive to take forward the recommendations. This Panel consisted of member organisations representing those with a direct interest in crofting, legal experts on the subject of crofting law, commercial organisations with experience in various aspects of crofting and land use, public agencies whose remit touched on crofting, relevant local authorities, and individual, active crofters and landlords.

49. Having considered the views of the Panel, the Scottish Executive prepared and issued the White Paper: Crofting Reform: Proposals for Legislation in July 2002. Around 2,500 copies were issued and 57 written responses received within the consultation period. 32 from organisations or agencies, 4 from grazings committees and 21 from individuals. Few of the responses commented on all the matters covered in the White Paper most comments were confined to a selection of individual aspects of the White Paper proposals. Public meetings chaired by the National Farmers Union of Scotland were held in crofting areas of the Highlands and Islands at which the White Paper was presented and discussed by speakers from the Scottish Executive and the Crofters Commission. There was general support for a revision of crofting law, with only one individual suggesting nothing whatever should be done at this point, and one other arguing that the whole system should be wound up. Several responses raised issues the White Paper did not address.

50. Following analysis of the response to the consultation, separate meetings were held by officials of the Scottish Executive with representatives of the Scottish Crofting Foundation, the National Farmers Union of Scotland, and the Scottish Rural Property and Business Association. The purpose of these meetings was to establish the views of those membership organisations on the implications of responses. The views of these bodies on the proposals in the consultation

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3 Copies of these responses are available from Scottish Executive Library
4 A summary of the analysis of the White Paper responses is contained within the draft Bill consultation paper available on the SE website at the following address. http://www.scotland.gov.uk
This document relates to the Crofting Reform etc. Bill (SP Bill 57) as introduced in the Scottish Parliament on 2 March 2006

document were already known as they had been made clear in their written responses. The purpose of the meetings was to explore some of the issues they had raised with a view to assessing how their concerns might be addressed and in some cases to see whether their views could be reconciled with views expressed in other responses. The discussions at these meetings had some influence on the nature of the proposals set out in the draft Bill consultation, including for example the decision to drop the proposal on local regulation of crofting tenure.

51. In 2005 the Draft Crofting Reform etc. Bill was published. This set out the main themes arising from the consultation on the White Paper and how they influenced the development of the draft Bill.

52. The White Paper was issued for consultation prior to the recent growth of interest in development of wind farms on croft land and the significant benefits which this would have for the community. It was also clear that the protective nature of current crofting legislation did not encourage developers to choose croft land as their first choice for wind farm sites. The draft Bill included new provisions to address these points.

53. In total there were 155 written responses to the consultation on the draft Bill and around 330 people attended the public meetings. There were 54 responses from organisations in total, 29 being direct responses and 24 being discursive responses. There were 100 responses from individuals in total, 54 being direct responses and 46 being discursive responses. Two respondents did not indicate whether they were responding as individuals or as organisations. Detailed analyses of these responses is contained within the published analysis of the responses to the draft Bill available from the Scottish Executive.

54. While most of those responding to the consultation commented on each individual question, or issue, in turn, others commented on specific issues of interest to them. Many respondents included qualifying and conditional comments. Others introduced new proposals that had not been included in the consultation paper on the draft Bill. On occasion, it was not easy to decide whether the consultee was in agreement or not with all or part of a proposal. In some cases, additional comments and qualifications to a response were offered by consultees who otherwise indicated an explicit positive or negative stance.

55. Following the consultation, a Reference Group was formed to advise the Deputy Minister for Environment and Rural Development on the proposals for amending the draft Bill. An analysis of the main issues raised in the consultation was prepared for consideration by the Reference Group and this analysis entitled “Draft Crofting Reform Bill Analysis of Consultation Responses” was published in December 2005. The Group consisted of experts on crofting legislation and active crofters. The meeting of the reference group discussed the draft Bill and

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5 Available from the Scottish Executive website as above
6 Available from Scottish Executive website as above
7 Reports of these meetings contained within the Analyses of the Consultation Responses to the Draft Crofting Reform etc. Bill document available on SE Website as above
8 Membership of Group available on SE Press Release of 26 October 2005 on the SE website as above
9 Analyses of the Consultation Responses to the Draft Crofting Reform Bill document available on SE Website
the analysis of the consultation responses focussing on what were considered to be the complex issues\textsuperscript{10}. These are listed below:

- market for crofts;
- short-term tenancies;
- new crofts;
- use of land;
- division of crofts;
- amending resumption process;
- extension of crofting.

56. The Deputy Minister also visited Shetland Isles, Assynt and Western Isles to consider the views of crofters. The views expressed these meetings is summarised as follows. In Shetland there was a view that the Bill should retain the provision for the creation of new crofts, and that the Commission should be involved at an early stage in local authority planning process when croft land was involved. There was also a call for the Commission to use its powers more effectively. Concerns were also raised about the value of crofts. Assynt crofters expressed concerns about the current market for crofts and problems with vacant crofts. They welcomed the proposal for the creation of new crofts in crofting areas seeing a lot of potential for woodland crofts in their area. Western Isles were concerned about the issue of interposed leases with regard to crofting community body buyouts. They also expressed concerns over the market for crofts. They also raised the issue of the Commission being involved in the planning process at an early stage.

57. Significant changes have been made to the final version of the Bill as a result of the consultation responses, meetings and visits. These are in sections 2, 4, 7, 10, 11, 12, 13, 22, 23, 25, 27, 30, 31, 32, 33, 34, 35 and 36 and schedule 1, schedule 2 and schedule 3. These changes include provisions at section 10 to allow the creation of new crofts within areas outside the crofting counties and to allow small landholdings to be converted to crofts within these areas. Provision at section 12 replacing the provision on irritancy with a new process allowing the landlord or the Commission with the consent of the landlord to terminate a tenancy if there is misuse or neglect which is not put right. Provision at section 23 designating an access route to a croft. Provision at section 35 creating a crofting community right to buy leases. Provision at section 36 which is a new provision governing any future loans by Scottish Ministers under crofting legislation. The provision on short term croft tenancies which was section 27 of the draft Bill has been dropped.

58. There were particularly high numbers of respondents to the consultation from Arran, calling for the Bill to extend crofting tenure to Arran. While this had been dismissed as a result of the consultation on the White Paper, Scottish Ministers responded positively to the request and provision has now been included to extend crofting tenure, so that not only Arran but other areas of Scotland can be included.

\textsuperscript{10} Reference Group meeting note. Available from Rural Communities Division, Scottish Executive, Pentland House
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EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

59. The Bill treats all crofters equally, in respect of the main provisions in the Bill. It does not treat any party distinctively on the basis of their gender, race, disability, marital status, religion or sexual orientation.

Human rights

60. The Executive is of the view that the Bill is compatible with the European Convention on Human Rights. In reaching that conclusion consideration was given to Article 1, Protocol 1 in relation to the right which is being given to crofting community bodies to buy tenants’ interests in certain leases held over croft land and the extension of crofting tenure outwith the Crofting Counties. Issues in connection with compliance with Article 6 were also a possibility in connection with measures in the Bill relating to the deprivation of rights in land but there are specific rights of appeal to a Scottish Court for both landlord and tenant. Article 8 was also considered but none of the croft land affected by the right to buy could form part of the home of the landowner.

Islands

61. As most of Scotland’s islands are contained within the crofting counties, this Bill directly relates to their conditions. By providing that crofting tenure can be extended to include (inter alia) other island communities in Scotland, the Scottish Ministers are recognising the special challenges that islands face in retaining population.

Local government

62. The powers and functions of local authorities will not be directly affected by these provisions.

Sustainable development

63. Crofting has an important contribution to make to the sustainable development of our more fragile rural communities in the Highlands & Islands. The provisions in the Bill strengthen this through dealing with the issue of misuse and neglect of croft land, providing opportunity for young people to live locally and sustain the population, and through offering crofters and crofting communities further opportunities to benefit economically from new approaches to land management.

Business cost compliance

64. The business interests of crofters are represented by the Scottish Crofters Foundation and the National Farmers Union of Scotland. The business interests of landlords are represented by the Scottish Rural Property and Business Association. All three organisations were consulted at each stage of the Bill’s development, including consultation on a Regulatory Impact Assessment.
(RIA). The RIA found that there were no significant burdens imposed on the business interests of crofters and landowners. The additional, but one-off, cost associated with the preparation of a map-based plan is not expected to have much impact on croft-based businesses.