INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this revised Financial Memorandum is published to accompany the Crofting Reform etc. Bill as amended at Stage 2.

COSTS ON THE SCOTTISH ADMINISTRATION

2. The legislative proposals contained in this Bill should not give rise to substantial additional costs for the Scottish Administration.

Crofters Commission

3. The Crofters Commission could incur costs as a result of the provision in the Bill which allows for a comprehensive right of appeal by any interested party to the Land Court against a regulatory decision by the Crofters Commission. It is difficult to assess precisely what the number of appeal cases may be, but it is possible that the Commission will face around 25-30 appeals annually, incurring legal costs in defending its decision in cases where the appeal succeeds or where the Land Court finds for the commission but does not award costs against the appellant. Each case could cost in the region of £5,000 - £10,000 depending on the type of case and the legal expertise which may be required by the Commission. In the event of a successful appeal, the Commission may also be required to pay the legal costs of the appellant. Again this could be approximately £5,000 - £10,000.

4. It is of course expected that the Commission will make robust decisions which stand up to appeal but nevertheless it seems reasonable to assume that costs might be incurred by the Commission in up to 5 cases per annum at an estimated total cost of between £50,000 -£100,000 per annum. The new regulatory regime provided for in the Act can be expected to come into operation in 2007 but given the time likely to be taken before an appeal is settled court costs are not likely to be incurred until 2008 onwards. It can also be expected that the number of appeals and the percentage that are successful will diminish over time as a body of case law builds up to guide decision making.

5. The Crofters Commission will face additional costs associated with proposals regarding the filing and storing of map-based plans of crofts, and of making maps available to the public on request. It is anticipated that the cost for such storage and staff time will be in the region of £20,000.
Scottish Land Court

6. The Scottish Land Court may incur some additional administrative costs as a result of providing a comprehensive right of appeal by any interested party to the Court against a regulatory decision by the Crofters Commission. Although it is difficult to assess precisely what the implications might be, it is estimated that there could be an annual increase of some 25-30 cases. Providing the opportunity to smallholders to convert their holding to crofting tenure on appeal to the Land Court will also have a financial impact, but it is not expected that the numbers of such applications will be large. As no record is kept of the number of holdings in landholder tenure the number of such tenancies is unknown, but, given that many of the holdings have been sold off or subsumed into other agricultural holdings, it is assumed that there are not many left. The average number of applications per annum to the Land Court associated with crofting legislation over the period 1994 to 2004 is 164. The maximum was 294, the minimum 107. The Court has the administrative capacity required to handle the additional work.

7. The extension of the crofting community right to buy to provide a right to buy leases could also generate some additional costs to Scottish Courts but the number of cases is likely to be very small (one or two a year).

Legal aid

8. Advice and assistance and civil legal aid are already available for proceedings in the Scottish Land Court. Eligibility for proceedings under the legislation will be assessed according to the normal statutory criteria. It is estimated that the additional costs to the Legal Aid Fund under the Bill, once demand and take up have become fully established, should not exceed £7,545 per annum (based on an average of 3 cases per annum at £2,515 each). This figure is based on the assumption that only around 10% of these additional appeal cases will require access to legal aid. This includes costs of solicitors and advocates, and is based on taking forward an appeal case. Some parties may also apply for legal aid to meet the costs of receiving advice and assistance from a solicitor before deciding not to proceed with a case. The costs of this should not exceed £498 (again based on an average of 3 cases per annum at £166 each). These costs will be met from resources that have already been budgeted for within the Fund. The Legal Aid Fund could recover expenses awarded in the event of a successful appeal to defray legal aid costs.

Crofting community right to buy

9. The costs to the Scottish Executive of the crofting community right to buy were not specifically identified in the Financial Memorandum produced for the Land Reform Bill. However, they have so far proved less than expected because no liability has yet been incurred in connection with valuation costs, compensation to owners or third parties or financial support to community bodies to assist with meeting compensation claims. The number of applications has proved to be in line with expectations (an average of 1 application per year.) Initial start up costs have been met and ongoing costs will relate to the administration of individual applications. The proposals in this Bill to extend the right to buy to include a right to buy leases will always be supplementary to a recent or ongoing application to buy land and it is expected that the additional cost of administering a second application for the same land will be marginal.
10. It is, in any case, by no means certain that this provision will result in additional applications. The aim of this provision is primarily to deal with the possibility that land owners will use interposed leases to complicate and thwart crofting community right to buy applications. If the crofting community body has a right to buy a lease it is unlikely that landowners will continue to create leases to achieve that goal since it would be pointless to do so. It is therefore expected that this provision may be used very infrequently and thus the additional costs to the Scottish Executive will be very small and essentially unquantifiable. If an application to buy an interposed lease is received it is anticipated that it will be dealt with at the same time as an application to buy the land is received. The overall administrative cost is therefore not likely to rise above £5,000 per application.

COSTS ON LOCAL AUTHORITIES

11. It is not anticipated that the provisions should impose any additional costs on local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Landowners

12. Where landowners exert their right to appeal as an interested party against a Crofters Commission decision, they may incur costs if they lose the appeal. Although there is no requirement to engage legal representation to appear before the Court, the costs of retaining a solicitor could be around £1000, and with an advocate costs could rise to around £5000.

13. Like all aspects of the crofting community right to buy, the right to buy a lease will be subject to appeal procedures. Costs associated with these appeals are normally recovered from one of the parties to the appeal and are estimated to approximate to £5,000 per appeal. However given the likelihood that there will be very few applications made under these provisions the number of appeals is likely to be very small and not more than a maximum of 2 per application (i.e. an appeal against the ministerial decision and an appeal against the valuation).

Crofters (either as tenants or owner occupiers)

14. Where crofters exert their right to appeal as an interested party against a Crofters Commission decision, they may incur costs if they lose the appeal. Although there is no requirement to engage legal representation to appear before the Court, the costs of retaining a solicitor could be around £1000, and with an advocate costs could rise to around £5000.

15. Crofters may also incur legal costs if they choose to challenge the refusal of consent by a landlord to permit forestry development on their common grazings.

16. Like all aspects of the crofting community right to buy, the right to buy a lease will be subject to appeal procedures. Costs associated with these appeals are normally recovered from one of the parties to the appeal and are estimated to approximate to £5,000 per appeal. However given the likelihood that there will be very few applications made under these provisions the number of appeals is likely to be very small and not more than a maximum of 2 per application (i.e. an appeal against the ministerial decision and an appeal against the valuation).