

SPICe Briefing

Crofting Reform (Scotland) Bill: Stage 3

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The Stage 3 debate on the Crofting Reform (Scotland) Bill will take place on the 1 July 2010.

This briefing is intended to provide a summary of the main amendments to the Crofting Reform (Scotland) Bill proposed and agreed during Stage 2, it does not set out to describe every change that has been made to the Bill. This briefing should be read with [SPICe Briefing 10/01 Crofting Reform \(Scotland\) Bill](#) (Edwards 2010) which was written about the Bill as introduced.



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EXECUTIVE SUMMARY

Part 1 of the Bill seeks to reorganise the Crofters Commission, the NDPB charged with regulating crofting. It would be renamed the Crofting Commission, and six of the nine Crofting Commissioners would be elected by crofters. Non Government amendments made during stage 2 would allow anyone 16 or over to stand as a candidate for election to the Crofting Commission if they were nominated by a registered crofter and to allow the spouse, civil partner or cohabitant of a crofter to vote in elections to the Crofting Commission. Amendments that would prevent the Commission from charging for handling regulatory applications were rejected on the Convener's casting vote. The Government agreed to make the Crofting Commission a statutory consultee to planning applications which concern croft land by amending planning regulations.

Part 2 of the Bill would establish a Crofting Register to be kept by the Keeper of the Register of Scotland. In its Stage 1 report the Rural Affairs and Environment Committee divided evenly over the merits of the proposed Register. During Stage 2, non-Government amendments to remove the provisions on the Register from the Bill were rejected on the Convener's casting vote. Over one hundred Government amendments to Part 2 of the Bill were agreed to by division. The four members of the Committee opposed to the Register abstained in these divisions.

Part 3 of the Bill would enhance the Crofting Commission's powers to deal with the neglect of crofts and absenteeism. Currently a crofter is defined as an absentee if they are ordinarily resident further than 16km from their croft. Government amendments were unanimously agreed during Stage 2 to increase this distance to 32km. Government amendments were also agreed to restate crofters' duty to cultivate and maintain their croft, to empower the Crofting Commission to enforce this, and to ensure that tenant crofters and owner-occupier crofters are subject to the same regulatory requirements.

Part 4 of the Bill contains miscellaneous amendments to the Crofters (Scotland) Act 1993, which remains the principal statute in crofting law. These amendments are intended to strengthen the powers of the Crofting Commission to prevent decrofting (the removal of land from crofting tenure). A non-Government amendment made during Stage 2 closes a legal loophole which allows crofters to dispose of croft land without paying a sum known as "claw back" to their former landlord. The closure of the loophole is intended to discourage speculative development on croft land. A number of other amendments were also agreed during Stage 2 to improve the law on croft succession, and to remove the requirement for appeals on crofting law to the Scottish Land Court to be by way of "stated case", a procedure which was said to be cumbersome and costly.

INTRODUCTION

Crofting is a form of regulated land tenure, unique to parts of Scotland. Crofts are agricultural holdings in the Highlands and Islands of Scotland which are subject to the Crofting Acts. A croft is an area of land, and may include a house. There are almost 18,000 crofts in Scotland, which are home to 33,000 people. The average croft is around 5 hectares of in-bye land, with a share in a larger area of common grazing. A survey carried out in 2007 found that, on average, 30% of a croft household's income comes from crofting. Jobs in the public sector, tourism, rural industry, service sectors and fishing are important in providing off-croft employment with which crofters can supplement their income. Crofting agriculture is based on rearing sheep and cattle.

The first crofting legislation, the Crofters Holdings (Scotland) Act 1886, followed the report of the Napier Commission in 1884 and gave crofters security of tenure, together with the right to a fair rent, the value of improvements they had made to the croft, and the right to bequeath the tenancy to a family successor. Crofts were regulated in the same manner as smallholdings in other parts of Scotland from 1912 until the Crofters (Scotland) Act 1955 restored a unique code of law to crofting. Crofters were given the right to buy their croft by the Crofting Reform (Scotland) Act 1976 since when around a quarter of crofters have become owner occupiers. Crofting law made since 1955 was consolidated in 1993 and the Crofters (Scotland) Act 1993 remains the principal statute. Crofting law was amended in the previous Parliament by the Crofting Reform etc Act 2007. One of the significant changes made by this Act was to allow new crofts to be created. Following the passage of this Act, the then Scottish Executive established a Committee of Inquiry on Crofting. The legislative reforms recommended in the Committee's [final report](#) form the backdrop to the present Bill (Committee of Inquiry on Crofting 2008).

The Crofting Reform (Scotland) Bill was introduced in the Parliament on the 9 December 2009. Apart from Part 2, which contains freestanding provisions, the Bill would make a number of amendments to the 1993 Act. As introduced, the Bill had 37 sections in five parts with two schedules.

The Bill was referred to the Rural Affairs and Environment Committee for Stage 1 consideration. During Stage 1 the Committee took evidence at six meetings between the 20 January and the 17 March 2010, and also carried out visits in the Western Isles, Caithness, Sutherland and Shetland. The Committee's [Stage 1 report](#) was published on the 6 May 2010, and contained 73 recommendations and conclusions (Scottish Parliament Rural Affairs and Environment Committee 2010a). The Scottish Government (2010a) provided its [response to the Stage 1 report](#) on 12 May 2010. The Stage 1 debate was held on the [13 May 2010](#) (Scottish Parliament 2010). The Committee considered the Bill at Stage 2 at three meetings on the 2, 9 and 16 June 2010 (Scottish Parliament Rural Affairs and Environment Committee 2010 b & c).

During Stage 2, 17 new sections and two schedules have been added to the Bill, and one section has been removed. The table below has some information about amendments proposed to the Bill during Stage 2.

Table 1 – Amendments to the Crofting Reform (Scotland) Bill during Stage 2

	Proposed	Number successful
Government	220	219
Non-government	74	16
Total	294	235

PART 1 – REORGANISATION OF THE CROFTERS COMMISSION

Part 1 contains provisions to reorganise the Crofters Commission, the NDPB responsible for regulating crofting. It would be renamed the Crofting Commission, and its functions would be amended to reflect its new focus on crofting regulation. Following recommendations by the Committee of Inquiry, the Commission's work to develop crofting has been taken on by Highlands and Islands Enterprise, so the changes in the Bill would reflect this. Its constitution and powers would also be revised to bring it into line with other Non Departmental Public Bodies. Additionally, the Bill would provide for up to six out of a maximum of nine Crofting Commissioners to be elected by crofters. The detailed regulation of the conduct of elections would be made by subordinate legislation.

THE CROFTING COMMISSION'S POWER TO CHARGE

The main work of the Commission is the regulatory casework associated with processing and deciding on applications crofters are required to make under crofting law. The Bill would empower the Commission to charge for carrying out its work, where charges had been prescribed by Scottish Ministers. The Government has made clear its policy that such charges would be made where the crofter is the principal beneficiary of an application, e.g. when a crofter applies to decroft an area for a building plot¹. Peter Peacock MSP proposed amendments to remove this power for the Commission to charge; and a second amendment which would have required the Commission to consult crofters on charges, and required that charges could only be required by regulations. The Committee divided evenly on both amendments, and the Convener, Maureen Watt MSP used her casting vote against the amendments (Cols 2473-46 Scottish Parliament Rural Affairs and Environment Committee 2010b).

ELECTIONS TO THE CROFTING COMMISSION

The detail of who would be eligible to stand for election to the Crofting Commission, and who would be eligible to vote would be left to subordinate legislation. The Government provided the Committee with a copy of draft regulations on the conduct of elections during Stage 1. The Government's policy was that only crofters registered on the Register of Crofts kept by the Crofters Commission would be eligible to stand for election and vote in elections. In its Stage 1 report on the Bill, the Rural Affairs and Environment Committee recommended that anyone should be able to stand for election to the Commission, provided they were nominated by a registered crofter. The Government accepted this recommendation, and said it would provide for this in the election regulations. During Stage 1 the Committee became aware of a potential equalities issue regarding the Government's proposal for the franchise. This is that approximately two-thirds of registered crofters are men, and only one-third are women. This led a majority of the Committee to invite the Government to consider the practicality of extending the franchise to spouses, civil partners or cohabitant of registered crofters. A majority of the Committee also recommended that elections should be decided using the alternative vote system. The Government accepted this recommendation.

Karen Gillon MSP proposed an amendment which would allow anyone 16 or over to stand as a candidate for election to the Crofting Commission if they were nominated by a registered crofter. The Committee unanimously agreed to this amendment. Karen Gillon MSP also proposed an amendment which would allow the spouse, civil partner or cohabitant of a crofter to vote in elections to the Crofting Commission. The Committee agreed to this amendment by five votes to

¹ Decrofting means to remove an area of land from crofting tenure.

three. Liam McArthur MSP proposed an amendment that would have specified on the face of the Bill that elections were to be held under the alternative vote system. He agreed to withdraw this amendment after the Minister for Environment, Roseanna Cunningham MSP's gave assurances that this was the Government's policy, and would be included in regulations on the elections (Cols 2751-55, Scottish Parliament Rural Affairs and Environment Committee 2010b).

THE CROFTING COMMISSION'S ROLE IN PLANNING

A major area of debate during Stage 1 was the development of croft in-bye land - the best crofting land which consists of more productive pasture or which can be used for growing crops. It was felt by many in crofting communities that development on this land threatens the whole viability of the crofting system. Development is often carried out on the in-bye because it is closest to roads and utilities. Many crofters would prefer development to take place on the common grazing land which is of less agricultural value. These issues are considered in a section of the Rural Affairs and Environment Committee's (2010a) Stage 1 report on [crofting and the planning system](#). The Crofters Commission has been made a key agency under planning law, which means it is consulted by local authorities when they are preparing local development plans. The Committee recommended that the Commission should also be made a statutory consultee on all planning applications on croft land which went against the local development plan. The Committee also recommended that there should be a similar presumption against the development of croft inbye land as there is against development of prime agricultural land. This does not mean that there could be no development allowed, but it would have to be shown that the development was for an essential purpose or to meet an established need where no other site was available, and in particular demonstrate why development could not be carried out on common grazings.

Elaine Murray MSP proposed amendments to Part 1 of the Bill which were intended to make the Crofting Commission a statutory consultee on planning applications. In the debate on the amendments, the Minister explained that the Government accepted the intention behind the amendments, but that in order to give the Crofting Commission the same role as other statutory consultees; this should be carried out by amending planning regulations² rather than primary legislation. The Minister could not commit to being able to make the necessary changes in advance of the 2011 Scottish Parliamentary elections. Elaine Murray agreed to withdraw these amendments. Liam McArthur MSP proposed an amendment which would have required the Scottish Government to revise their planning policy to include a presumption against development on croft inbye land. The Minister said that in the Government's view primary legislation should not direct the detail of policy. The Minister explained that the Government was already working with the Crofters Commission, Shetland Islands Council and Comhairle nan Eilean Siar to develop plans to protect the best croft land from inappropriate development, and that this experience would inform the next review of planning policy. Liam McArthur did not move the amendment (Col 2763 – 2766, Scottish Parliament Rural Affairs and Environment Committee 2010b).

PART 2 – THE CROFTING REGISTER

The Crofters Commission currently keeps a Register of Crofts which records details of the ownership, tenants and extent of crofts, but does not include a definitive record of croft boundaries. Part 2 of the Bill contains freestanding provisions which would require the Keeper of the Registers of Scotland to establish and keep a new Crofting Register. Each entry in the Register would include details of the owner and tenant of the croft, and a map showing the

² Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

boundaries of the croft. All new crofts created after the Bill was enacted would require to be registered. Otherwise, the Bill contains a number of actions or “trigger points” which require a croft to be entered in the register. These include a number of regulatory actions which already require a crofter to make an application to the Crofters Commission, e.g. to assign the tenancy of their croft to another person and, in the case of owner-occupied crofts, where the croft is sold. The Policy Memorandum states that the estimated average cost of registration has been reduced from an estimated £250 in the Draft Bill consultation to between £80 and £130. The Scottish Land Court has jurisdiction to determine croft boundaries where they are disputed, and the Bill would give the Court jurisdiction to determine any disputes over boundaries if they were challenged in the registration process.

In its Stage 1 report on the Bill, the Rural Affairs and Environment Committee (2010a) could not reach agreement on whether the proposed crofting register should be included in the Bill. Half of the Committee supported the proposals, half did not.³ Notwithstanding this, the Committee also made a number of recommendations on the detail of the Government’s proposals for compulsory registration. Part 2 of the Committee’s report considers the evidence the Committee heard and the arguments for and against a register in detail. The Committee’s conclusions on the register were:

295. Four members believe that a map-based register would bring considerable benefits to crofting, and consider that—

- it would provide certainty over precise croft boundaries to crofters and landowners and those acting on their behalf, to the Commission, the Land Court, and the Government. In this regard, we note concerns that knowledge as to croft boundaries may be being gradually lost with the passage of time;
- over time, it will reduce and finally eliminate the ground for dispute on boundary questions;
- most witnesses appear to be in favour of the mapping of crofts.

296. Those of us who support the proposal in principle also think that it is appropriate that the Registers of Scotland maintain the register, as they appear to us to have the requisite expertise. We note that the information on the register will be publicly available, including via the internet. However, all Committee members (including those who do not accept the principle of a new register) note that many people in crofting areas have difficulties accessing broadband internet connections. Assuming that the Bill as passed will continue to make provision for a new map-based register, **the Committee recommends that the Government gives consideration as to how best to make entries in the Crofting Register more accessible to people in the crofting counties lacking internet broadband connections.**

297. The other four members believe that a map-based register is not needed, and consider that—

- the Government has set up a system for populating the register that will take many years to complete. We consider that this shows that the Government does not consider a map-based register to be immediately essential;
- the Crofters Commission currently asks for maps where this is considered desirable or necessary to determine an application. We are not aware that the absence of a map-based register has been a major impediment to regulation.

³ The proposal is supported by Alasdair Morgan MSP, John Scott MSP, Maureen Watt MSP, and Bill Wilson MSP. Karen Gillon MSP, Liam McArthur MSP, Elaine Murray MSP and Peter Peacock MSP oppose it.

- The Scottish Crofters Federation has come to the view that an updated version of the register already held by the Crofters Commission is sufficient for the purposes of regulation

298. Those of us who are not supportive of a new map-based register are also concerned at the proposal that it be kept by the Keeper of the Registers, as we consider that this may change the current purpose of the register from one necessary to assist effective regulation to one more associated with title to land, ownership of assets, and a potential trade in crofts (Scottish Parliament Rural Affairs and Environment Committee 2010a).

An alternative to the approach set out in the Bill was proposed and debated during Stage 1. This was that crofting communities could carry out mapping exercises, and present a collective set of croft boundaries that they had agreed to the Keeper of the Register, the idea being to reduce the cost and, by agreeing boundaries together, to avoid disputes. The Scottish Government has responded that although the proposed Crofting Register would require registration in certain circumstances, voluntary registration of crofts would also be possible. To give crofters an opportunity to map boundaries collectively, the Government has agreed that it will delay the introduction of the trigger points that will require compulsory registration for a year from the date the Crofting Register is operational (Col 2808 Scottish Parliament Rural Affairs and Environment Committee 2010c). Given the time it will take to establish the Crofting Register, this means the earliest that that compulsory registration would come into effect would be summer 2013. The Government has also stated that it will review progress with voluntary registration at this point, and could delay the introduction of compulsory registration for a further year. The Scottish Government (2010b) has [offered](#) to provide £100,000 to reduce the cost of collective registrations by £20 per head. Notwithstanding this, the Government's position remains that compulsory registration on the Crofting Register will be required so that the ultimate objective of the register can be fulfilled – to create a comprehensive and authoritative source of information that will give crofters and others certainty about the boundaries of crofts.

During Stage 2, Peter Peacock MSP lodged a series of amendments which would have removed the sections on the Crofting Register from the Bill. He also proposed amendments which would have allowed for community mapping exercises to be carried out, and would have allowed the Crofters Commission to include maps of croft boundaries in the Register of Crofts that it holds. The Committee divided evenly on these amendments⁴, and the Convener used her casting vote to vote against them (Scottish Parliament Rural Affairs and Environment Committee 2010c).

The Government proposed over one hundred amendments to Part 2 of the Bill, which were carried. The Members who oppose the Register abstained in the divisions on these amendments.⁵ In summary, the policy intentions of these amendments were:

- To ensure that transfers of owner-occupied crofts are recorded in the register
- To amend the trigger points for the actions which require registration. To provide clarity over the actions which require registration, the Bill will now include a schedule with a table listing the actions which require registration or updating of a registration and who is responsible in each case

⁴ Since the Committee published its Stage 1 report Aileen Campbell MSP has replaced Alasdair Morgan MSP on the Committee. The Members who voted to remove the provisions on the Crofting Register from the Bill and in favour of the amendments on community mapping were Karen Gillon MSP, Liam McArthur MSP, Elaine Murray MSP and Peter Peacock MSP. The Members who voted to retain the provisions on the Crofting Register and against the amendments on community mapping were Aileen Campbell MSP, John Scott MSP, Maureen Watt MSP and Bill Wilson MSP.

⁵ Karen Gillon MSP, Liam McArthur MSP, Elaine Murray MSP and Peter Peacock MSP.

- To provide for the Crofting Register to be updated automatically when crofters make subsequent regulatory applications to the Crofting Commission, without the need for a separate application
- To provide for common grazings and runrig⁶ to be included in the register, and that records of common grazings are updated. The Scottish Government will map common grazings, and the Crofting Commission will be responsible for making applications to include them in the register. This is intended to ensure that, over time, all croft land will be registered
- To amend the processes whereby the Crofting Commission and the Keeper will handle applications for registrations, e.g. providing for applications to be rejected if they are inaccurate
- To provide that the Keeper can only register so much of a croft as is not already registered to avoid overlaps in croft boundaries recorded in the register. Section 13 on ranking of crofts, which was intended to avoid overlaps in the Bill as introduced, has been removed
- To clarify the Keeper's responsibilities for indemnifying against mistakes made in registration and to provide for the register to be rectified in the advent of a mistake
- To amend the process for notification of the entry of a croft in the register e.g. to provide that owner/occupiers of adjacent non-croft land require to be notified.
- To allow land that has been decrofted or resumed from crofting tenure to be removed from the register after 20 years (within 20 years it is possible for such land to be returned to crofting tenure)
- To provide that the Land Court will determine all disputes in relation to the register – the Bill as introduced provided that appeals against registration by the Keeper would be heard by the Lands Tribunal for Scotland (Scottish Parliament Rural Affairs and Environment Committee 2010c)

In the Bill as introduced one of the triggers requiring registration was the transfer of croft land. The Rural Affairs and Environment Committee heard evidence during stage 1 that this could create complications where a crofting estate that could have hundreds of crofts was being transferred. Consequences of this could be to seriously delay or prevent community buy-outs of crofting estates under the Land Reform (Scotland) Act 2003, and to make the transfer of any crofting estate significantly more costly and complicated. Peter Peacock MSP moved an amendment which was unanimously agreed which removes the transfer of estates from the trigger points requiring registration. Subsection 4(4) of the Bill would give Ministers a power to amend the trigger points by order. John Scott MSP moved a related amendment which would prevent the transfer of land, other than the transfer of an owner occupied croft, being added as a trigger point using this power (Cols 2812-15, Scottish Parliament Rural Affairs and Environment Committee 2010c).

When an application for the registration of a croft had been successful, the Bill as introduced provided for a six month period for the registration to be challenged, from the time of the receipt of the notification of the registration by the Crofting Commission. John Scott MSP moved two amendments that were agreed on division which extend the time period for this challenge to nine months, and provide that the period for challenge starts from the time when public notification of the registration is made (Cols 2844-45, Scottish Parliament Rural Affairs and Environment Committee 2010c).

⁶ Runrig is a type of croft land held in common which is cropped in strips during the summer, and grazed during the winter.

PART 3 – DUTIES OF CROFTERS AND OWNER OCCUPIER CROFTERS

Part 3 of the Bill contains new provisions on absentee crofters and misuse and neglect of crofts. Absentee crofters are defined as those who ordinarily live further than 16km from their croft. Current crofting law requires that crofters put all of their croft to purposeful use. This is subject to an exception that a crofter is deemed not to be neglecting the croft if they refrain from an activity on the croft in order to preserve the natural beauty in the vicinity of the croft, or its flora and fauna. The Bill would seek to tighten up this exception by adding that it must be done in a “planned and managed manner”.⁷ Where a croft is misused or neglected, the Crofters Commission can only intervene where they have received a complaint. During Stage 1 the Committee heard evidence that since 2007, the Commission has only received two complaints of neglect or misuse, although its own evidence to the Committee was that potentially 8-10,000 crofts were unworked (the exact number being highly uncertain) (paras 345 and 456, Scottish Parliament Rural Affairs and Environment Committee 2010a). The Bill would place a duty on the Crofting Commission to investigate and enforce cases of neglect.

The Crofting Reform (Scotland) Act 1976 gave crofters a right to buy. Those four thousand crofters who have exercised this right have technically become the landlords of a vacant croft. Crofting law was not amended to provide for there to be owner occupier crofters, so technically under crofting law they are the landlord of a vacant croft, and as such, the Crofters Commission could have required them to let the croft to a new crofter. The Commission has maintained a policy that where owner-occupiers are not absent, they have not required the croft to be let. However, other requirements of crofting law which apply to croft tenants, in particular the requirement to cultivate the croft or put it to purposeful use, cannot be enforced against owner occupiers. The Bill would change this by defining owner-occupier crofters for the first time in crofting law, and requiring them to reside on or near their crofts and to put them to purposeful use. The Government’s policy is that tenant crofters and owner-occupier crofters should be subject to the same regulatory requirements. The Bill would also give owner-occupier crofters a power to let their croft under a short-lease for a period of up to ten years. At present an owner-occupier cannot let their croft without creating a new croft tenancy.

Where the Crofting Commission identifies cases of absenteeism or neglect, the Bill would require it to take action to resolve this, unless there is good reason not to. The Bill provides a process whereby the crofter is given an opportunity to resolve the issue. If it was not resolved, the Commission would be able to require the crofter to give up their tenancy, or to re-let the croft in the case of an owner-occupied croft. Since many crofts also include a house, the Bill would allow the croft to be divided so that the crofter could remain living in the house, and the croft land could be let. The purpose of these provisions are four fold: to continue to ensure that crofting has a role in maintaining population in remote communities by acting against absenteeism; to ensure that croft land is put to better use by acting against misuse and neglect; to release unworked crofts for new-entrants; and through regulation, to reduce the incentive to acquire croft land for speculative development.

The Rural Affairs and Environment Committee heard evidence during Stage 1 that the distance used to determine absenteeism has become anachronistic, in that it does not account for modern transport methods or commuting practices, and that it can also be arbitrary - the distance is measured as the crow flies, so a crofter may live much more than 16km from their croft by road. In its Stage 1 report, the Committee agreed that it was appropriate to have a distance which would trigger the attention of the Commission, but not necessarily their intervention. The Committee found the arguments in favour and against changing the existing

⁷ In other words it would not be sufficient for the crofter to simply do nothing, and then argue that they were preserving the beauty of the croft – they would have to demonstrate to the satisfaction of the Crofting Commission that this use of the croft had been planned.

distance were finely balanced, but invited the Government to consider doubling the distance to 32km. The Committee considered that this could reduce the caseload of the Crofting Commission in investigating absenteeism, and focus its attention on cases that were more likely to be causing a problem. The Government agreed with the Committee's recommendation and lodged amendments at Stage 2 to increase the distance to 32km. These amendments were agreed unanimously (Col 2783-86, Scottish Parliament Rural Affairs and Environment Committee 2010b).

As well as the duty to be resident, and the duty not to misuse or neglect their croft, tenant crofters are also subject to a set of statutory conditions in Schedule 2 of the 1993 Act. These include a requirement for crofters to cultivate their croft or put it to purposeful use, and to keep it in a fit state for cultivation. If a landlord considers that a crofter is not respecting these conditions, they can serve a notice on the crofter, which can result in the crofter losing their tenancy. The landlord or a member of the crofting community can also complain to the Crofters Commission that the conditions are not being respected. Other than this, the Commission does not have a locus in enforcing the conditions. The Government proposed amendments during Stage 2 which would repeal these conditions in the Bill, and bring them into a new section 5C to the 1993 Act which would be placed alongside the sections on misuse and neglect. The effect of the changes would be that the Crofting Commission could take proactive action to ensure that these conditions are respected, and that croft tenants and owner occupiers are under the same duty to cultivate and maintain their croft. The amendments were agreed unanimously (Col 2786-90, Scottish Parliament Rural Affairs and Environment Committee 2010b).

The statutory conditions, and the duty for a crofter to cultivate and maintain their croft described above, require that every part of a croft is either cultivated, or put to purposeful use. If strictly applied, this could be onerous, considering that some crofts include areas of rock or bog which would be impossible to cultivate. Peter Peacock MSP raised this issue when the amendments on a duty to cultivate and maintain were being considered. The Minister explained that the amendments mirrored the existing terminology, but said that the Government would consider whether it would be possible to lodge a Stage 3 amendment that would clarify this issue (Col 2868-69 Scottish Parliament Rural Affairs and Environment Committee 2010d).

An issue which the Committee considered during Stage 1 was the way problems of neglect and absenteeism will be detected by the Crofting Commission. The Committee found an understandable reluctance in some crofting communities for individuals to come forward to complain about their neighbours. Members proposed three alternative solutions in Stage 2 amendments to try and address this problem. John Scott MSP proposed an amendment which would have required crofters to self-certify on a pro-forma that they were not absent, and were not neglecting their croft. A lack of returns would give the Commission a cue to investigate. Elaine Murray proposed that the Crofting Commission should be under an obligation to investigate a complaint made by either a grazing committee, or in a petition signed by at least a third of the registered crofters in a crofting township. The Camuscross crofting community on Skye produced a report on crofting in its township, which identifies instances of absenteeism and neglect, which has been commended as an exemplar. Rob Gibson MSP proposed an amendment which would require grazing committees to submit an annual return to the Crofting Commission in which they would report on the numbers of absenteeism and neglect. Responding to the debate on these amendments, the Minister said that while she supported their intent, there were practical and technical problems with them which led her to ask the Committee to reject them. The Minister offered to work with the members to produce a solution in time for Stage 3. The amendments were subsequently withdrawn or were not moved (Col 2872-82, Scottish Parliament Rural Affairs and Environment Committee 2010d).

Other amendments made to Part 3 of the Bill during stage 2 include a change to the definition of an owner occupier crofter, to include a crofter's nominee, and the owner of a newly created croft, and amendments related to the Crofting Register. For example, where an owner-occupier

crofter applies to the Crofting Commission for consent to let their croft under a short lease, and the croft is not recorded on the register, this will be a trigger for registration.

PART 4 - FURTHER AMENDMENTS OF THE 1993 ACT

Part 4 of the Bill contains further amendments of the 1993 Act. If a crofter sells their croft to a person out with their family within five years of acquiring ownership of the croft, the former landlord of the croft is entitled to a further payment from the crofter, known as 'landlord's claw back'. Section 26 of the Bill would amend the 1993 Act and extend this claw back period to ten years. The Scottish Land Court has ruled that "it is not appropriate to use a control designed to protect crofting interests for the purpose of acting as a second planning authority". The consequence of this ruling is that the Crofters Commission feels unable to refuse a decrofting application where planning consent has already been granted. The Bill would change this by strengthening the grounds on which the Crofters Commission can reject a decrofting application, including those where the applicant has already obtained planning permission. This is intended to address speculation on croft land.

Peter Peacock MSP proposed an amendment which would have removed the section of the Bill extending claw back from five to ten years. He argued that the extension of the claw back period might not deter a determined speculator, but it would affect a crofter who wanted to raise funds e.g. for investment in machinery through a development; that landowners rights to compensation for land that they have had no effective rights over since the late 1800s were being extended; and that the amount of claw back was uncertain and could be miniscule and therefore not deter speculation. The Minister argued that the amendment would go a long way towards deterring speculation on croft land, and explained that in the Government's view, claw back would be half of the development value of land, which would be a substantial sum. The Committee voted against this amendment by five votes to three (Col 2774-77, Scottish Parliament Rural Affairs and Environment Committee 2010b).

Related to the issue of landlord's claw back is the decision by the Court of Session in the case of "*Whitbread v Macdonald*" in 1992 where the Court held that if a crofter used the provisions now included in section 13(1) of the 1993 Act to request that the landlord transfer ownership of the croft to a third party (or 'nominee'), then that transfer would not trigger a claw back liability. Any onward transfer of ownership by the 'nominee' within a five year period would however oblige the nominee to make a claw back payment to the former landlord of the croft. The Bill as introduced would not have changed the possibility for a tenant crofter to transfer ownership of the croft to a nominee and avoid claw back in this way. During Stage 1 the Committee heard evidence that the existence of this legal loophole was not the intention of the UK Parliament when it legislated in the Crofting Reform Act 1976, and that it encouraged speculative development on croft land, as it allowed crofters to sell off house sites without triggering claw back. The Committee's Stage 1 report recommended that the loophole should be closed. The Government accepted this recommendation.

Alasdair Allan MSP proposed an amendment which would restrict the definition of a nominee to a member of the crofters family, so closing the loophole. This amendment was agreed to unanimously (Col 2767-69, Scottish Parliament Rural Affairs and Environment Committee 2010b).

During Stage 1 the Committee heard evidence on a number of issues which were not dealt with in the Bill as introduced. One of these issues was succession to a croft tenancy, in particular where there are problems caused by intestacy or inadvertent intestacy. The Government proposed a number of amendments to the law on croft succession which would be included in Part 4 of the Bill. The amendments would extend the time period an executor has to carry out

their duties, make it easier for an executor to divide a croft, for example to separate a croft house from the croft land, and remove the requirement to advertise applications to divide crofts associated with croft bequests. The amendments were unanimously agreed to by the Committee (Col 2781-83, Scottish Parliament Rural Affairs and Environment Committee 2010b).

Another issue which was raised during Stage 1 was the stated case procedure which applies to appeals to the Scottish Land Court against decisions of the Crofters Commission. This was said by witnesses to be cumbersome and unnecessarily complex and costly. The Government proposed amendments which would remove the requirement for appeals to the Scottish Land Court to be by way of stated case. The amendments were unanimously agreed to by the Committee (Col 2790-92, Scottish Parliament Rural Affairs and Environment Committee 2010b).

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