



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

9th Meeting, 2011 (Session 4)

Wednesday 2 November 2011

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

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Common Fisheries Policy:** The Committee will take evidence in roundtable format from—

Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation;

Kara Brydson, Marine Policy Officer, RSPB Scotland;

Dr Mireille Thom, Senior Marine Policy Officer, WWF Scotland;

Ian Gatt, Chief Executive, Scottish Pelagic Fishermen's Association;

Niels Wichmann, Chairman, North Sea Regional Advisory Council;

Will Clark, Vice Chairman, Seafood Scotland;

John Cox, Chief Executive, Scottish Seafood Association;

Professor Ian Boyd, St Andrews University.

3. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

the Crofting Reform (Scotland) Act 2010 (Commencement No. 2, Transitory, Transitional and Saving Provisions) Order 2011 (SSI 2011/334 (C. 29)).

4. **Post legislative scrutiny of the Land Reform (Scotland) Act 2003:** The Committee will consider a response from the Scottish Government.

5. **European Union document:** The Committee will consider the following European Union document which may raise concerns in relation to subsidiarity—

Amended proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1290/2005 and Council Regulation (EC) No 1234/2007 as regards distribution of food products to the most deprived persons in the Union.

Lynn Tullis/Simon Watkins
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The papers for this meeting are as follows—

Agenda item 2

PRIVATE PAPER

RACCE/S4/11/9/1
(P)

Agenda item 3

Cover note

RACCE/S4/11/9/2

[SSI 2001/334](#)

Agenda item 4

Note by the Clerk

RACCE/S4/11/9/3

Agenda item 5

PRIVATE PAPER (TO FOLLOW)

Rural Affairs, Climate Change and Environment Committee

9th Meeting, 2011 (Session 4), Wednesday 2 November 2011

Subordinate legislation cover note for SSI 2011/334

Title of Instrument	The Crofting Reform (Scotland) Act 2010 (Commencement No. 2, Transitory, Transitional and Saving Provisions) Order 2011 (SSI 2011/334 (C.29))
Type of Instrument	Commencement Order
Laid Date	16 September 2011
Circulated to Members	19 September 2011
Meeting Date	2 November 2011
Minister to attend the meeting	No
SSI drawn to the Parliament's attention by Subordinate Legislation Committee	No
Reporting Deadline	7 November 2011

Purpose

1. This Order appoints the days for the coming into force of various provisions of the Crofting Reform (Scotland) Act 2010.
2. A copy of the [Explanatory Note](#) is included with the papers.

Procedure

3. This instrument was laid before the Parliament, but is not subject to any Parliamentary procedure. Under the new regime introduced by the Interpretation and Legislative Reform (Scotland) Act 2010, Scottish statutory instruments previously not laid such as these Commencement Orders now require to be laid before the Parliament.
4. Under Rule 10.1.3, any instrument laid before the Parliament is to be referred to a lead committee for consideration. Therefore, instruments laid only but not subject to any parliamentary procedure are also now referred to lead committees for consideration.

5. This requirement on lead committees to consider these instruments is an unintended consequence of the recent rule changes in light of the ILR Act and it is proposed that this requirement be removed in the next round of minor rule changes.

Subordinate Legislation Committee

6. The Subordinate Legislation Committee considered this instrument at its meeting on 4 October 2011 and agreed that no points arose on the instrument.

Recommendation

7. The Committee is invited to consider and take note of this instrument.

Clerks to the Rural Affairs, Climate Change and Environment Committee

Rural Affairs, Climate Change and Environment Committee

9th Meeting, 2011 (Session 4), Wednesday 2 November 2011

Land Reform

Background

1. The Rural Affairs, Climate Change and Environment Committee formally agreed its work programme¹ at its meeting on 7 September 2011. Part of that agreed work programme included work on the issue of land reform. The Committee agreed to—

- take evidence from the researchers who were commissioned by the previous Rural Affairs and Environment Committee to produce a report examining certain post-legislative aspects of the Land Reform (Scotland) Act 2003² in order to bring the new Committee up to date with the work done in that review, and to receive an update on the current situation. This evidence session took place on Wednesday 21 September³;
- monitor the Scottish Government's planned review of the 2003 Act to ensure any work the Committee may do could add value. The Committee wrote to the Scottish Government seeking details on the timescale, scope and stage of the planned review and asking whether a review group would be established. A letter from the Cabinet Secretary for Rural Affairs and the Environment was subsequently received⁴. This states that the Scottish Government is currently undertaking an overview of the evidence on land reform in Scotland and this will contribute to the planned review. There was no indication of the timing of completion of the overview. The Cabinet Secretary indicated that a Land Reform Review Group to advise on the review of land reform legislation would be appointed during the course of 2012; and
- consider how it wishes to proceed on the issue following conclusion of the above steps.

Previous work on post legislative scrutiny of the Land Reform (Scotland) Act 2003

2. The previous Rural Affairs and Environment Committee concluded its scrutiny of the Land Reform (Scotland) Act 2003 shortly before the dissolution of Parliament in March 2011, by writing a letter to the Scottish Government

¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee's work programme. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/31030.aspx>

² Scottish Executive (2003). Land Reform (Scotland) Act 2003. Available at:

<http://www.legislation.gov.uk/asp/2003/2/contents>

³ [Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report of the Meeting on 21 September 2011*](#)

⁴ [Letter from the Cabinet Secretary for Rural Affairs and Environment, 21 September 2011.](#)

(Annexe B). This letter confirmed the Committee's broad agreement with the main conclusions of the research in relation to access, the community right to buy and thecrofting community right to buy. The Committee sought the view of the Scottish Government on a number of issues of concern including:

- whether the Scottish Government would consider consulting on the possibility of introducing processes other than litigation to settle disputes over access;
- the use of local access forums to settle concerns in relation to walkers exercising their right and;
- how to offer leadership on the development of core path planning networks, including long distance footpaths.

3. The Committee also considered that there were parts of the Act that needed to be amended and outlined the areas it believed the Scottish Government's review should focus on. These included:

- time-frames set out in the legislation;
- the mapping requirements set out in the Act;
- an improved approach to covert or semi-covert sales;
- the definition of "community body";
- the process for re-registration of a community interest;
- the process of a community body identifying the owner of land;
- promoting the right to buy outside the highlands and islands, and
- the role of enabling bodies.

4. The Scottish Government replied to the previous Committee following dissolution stating that these were matters for an incoming Rural Affairs and Environment Minister⁵.

Next steps

5. In considering the next steps, the Committee may wish to reflect on the evidence from the researchers who were commissioned by the previous Rural Affairs and Environment Committee and the content of the recent letter from the Cabinet Secretary providing an update on the Scottish Government's plans in relation to a review of the Land Reform (Scotland) Act 2003. The Committee may also wish to reflect on the letter sent by the previous Rural

⁵http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/LettertoRAELandReformMarch2011.pdf

Affairs and Environment Committee following completion of the research and the Ministerial response.

6. The Committee may wish to contribute to the Scottish Government's current review of evidence. The Committee could contribute to this by reviewing the contents of the previous Committee's letter and considering whether it wishes to forward this, or an amended version of this, to the Scottish Government for a response. Once a response to the substantive points has been received the Committee may wish to consider whether any further action is required.

Clerk to the Committee
Rural Affairs, Climate Change and Environment Committee

POST LEGISLATIVE SCRUTINY OF THE LAND REFORM (SCOTLAND) ACT 2003**EXECUTIVE SUMMARY****SEPTEMBER 2010****1. Introduction**

The aim of the study is to examine implementation of the provisions of the Land Reform (Scotland) Act 2003 (LRSA) relating to access rights in Part One of the Act, the community right to buy in Part Two of the Act and the crofting community right to buy in Part Three of the Act. Its objectives are to:

- Determine the extent of use of provisions in Parts One, Two and Three;
- Review the evidence of any additional wider impact of the LRSA on recreational access to land, the community right to buy and the crofting community right to buy;
- Identify views on implementation of the provisions;
- Examine stakeholders' experiences of community land buyouts and crofting land buyouts outwith the provisions of the Act;
- Identify any barriers to greater use of the provisions;
- Identify options for change to the provisions themselves or their implementation which could encourage greater use.

2. Methodological Approach

The study combined reviews of relevant academic and non-academic literature with primary research involving electronically-administered surveys and semi-structured face-to-face and telephone interviews with selected access, community ownership and crofting community ownership stakeholders to address the above objectives.

3. Key Findings for Access Rights**3.1 Extent of Use of the Provisions**

It is not possible to quantify the extent to which statutory access rights are being exercised by recreational and other access-takers due to a lack of available and readily comparable data. However, Access Authorities have been active in fulfilling their statutory remits. There has been slippage in some Access Authorities' progress in drawing up their Core Paths Plans as required in Part One of the Act. Access Authorities have made limited use of their enforcement powers under the Act and there is currently very little case law relating to statutory access rights.

3.2 Additional Wider Impact of the LRSA on Recreational Access to Land

Clarification of statutory access rights is viewed as increasing the confidence and assertiveness of access-takers in relation to exercising these rights. However, there are concerns that a minority of access-takers are emphasising their statutory rights over their responsibilities when taking access.

3.3 Views on Implementation of the Access Provisions

There are concerns amongst many stakeholders that Access Authorities are reluctant to pursue court action to resolve access disputes, partly because of the potentially adverse financial implications of losing a case. There is a perception that the legislation has gradually improved relations between access-takers and land managers. Core paths planning is considered to have raised the profile of access issues within Local Authorities and encouraged community engagement and constructive dialogue between stakeholders. However, there are concerns that core paths planning will be a ‘missed opportunity’ if Access Authorities have insufficient funding to maintain and manage core paths networks.

3.4 Barriers to Greater Use of the Access Provisions

Barriers to greater use of access provisions as they relate to enforcement of access rights are mainly financial and cultural (linked to the Act’s enabling ethos). These barriers are arguably exacerbated by the definitional vagueness associated with concepts such as ‘privacy’ and ‘curtilage’ in relation to access rights and a perceived reluctance by Access Authorities to test these definitions in court.

3.5 Stakeholders’ Proposals for Change

Stakeholders’ proposals for change focus on amendments to specific provisions in the Act to make it a duty for Local Authorities to maintain core paths, to enable Access Officers to have specific powers of entry onto land, and to clarify section 14 of Part One (dealing with prohibition signs, obstructions, dangerous impediments etc.). Other proposals focus on funding issues; clearer guidance on particular issues such as control of dogs and wild camping; enforcement and other mechanisms for resolving access disputes; and educational measures such as integrating the highly regarded Scottish Outdoor Access Code into the Curriculum for Excellence at primary and secondary school levels.

4. Key Findings for the Community Right to Buy

4.1 Extent of Use of the Provisions

To date, seven Community Bodies have purchased land using the community right to buy provisions. Two more Community Bodies are currently in the process of doing so and one has an application to purchase under consideration. Ten Community Bodies have reached purchase stage but failed to complete within the timetable set out by the Act. 55 registrations of interest in land remain outstanding.

4.2 Additional Wider Impacts of the LRSA on the Community Right to Buy

Literature suggests that the very existence of the Act may inspire community action towards the control of local assets and make landowners more receptive to local communities’ developmental aspirations. Research participants indicated that while the Act had stimulated general awareness of land reform in their community, it had not been directly useful as a bargaining tool with landowners. The extent to which the community right to buy has empowered community groups appears variable. Some groups have

disbanded after unsuccessful applications to register interest. However, others have continued to pursue community-based initiatives.

4.3 Views on Implementation of the Community Right to Buy Provisions

Research findings highlighted the complexity of using the community right to buy. Specific issues were raised concerning access to the electoral register, community body definitions, ballot turnout requirements and the definition of 'community'. 'Late' registrations are seen as a key 'emergency' tool by community groups, and the majority of successful purchases to date have been 'late'. Scottish Government Community Assets Branch officials were widely commended for their accessibility and responsiveness in dealing with Community Bodies.

4.4 Barriers to Greater Use of the Community Right to Buy Provisions

The legislation's complex and resource-intensive administrative requirements and a lack of available funding to support community purchases of land are viewed as significant barriers to greater use of the provisions. Research findings suggest that reluctance to provoke community conflict and damage relations with locally-based landowners are also significant factors in explaining why groups avoided using the community right to buy to purchase land.

4.5 Stakeholders' Experiences of Community Land Acquisition outwith the Act

The literature and our primary research findings indicate that mechanisms such as the National Forest Land Scheme are viewed as less complex to use than the LRSA's community right to buy provisions. Our research found that, in general, community groups believe that they have greater flexibility in purchase negotiations and more amicable relationships with landowners if purchases can be concluded outwith the Act.

4.6 Stakeholders' Proposals for Change

Proposals for change mainly focus on specific issues relating to the implementation of the community right to buy. They include more time and flexibility for Community Bodies to meet their obligations under the community right to buy provisions, similar criteria for late registrations as for timeous registrations and a wider definition of community membership. More general proposals are also made in relation to further promoting the Act and making funding available to support community purchase and ownership of land.

5. Key Findings for the Crofting Community Right to Buy

5.1 Extent of Use of the Provisions

Current use of the crofting community right to buy is very limited. Only the Galson Trust and the Pairc Trust, both located in the Isle of Lewis, have registered to use these provisions. In the case of the Galson Trust, registration brought the landowner's representative to the negotiating table and, although the registration was 'active', the sale was negotiated privately. In the case of the Pairc Trust, the landlord has systematically explored a range of legal means to avoid or delay sale. The case is still unresolved and awaiting a Court of Session hearing.

5.2 Views on Implementation of the Crofting Community Right to Buy Provisions

To date, the crofting community right to buy has never been implemented to the point where a crofting community body has used it to purchase eligible land and associated rights. However, it is viewed as extremely onerous, complex and resource-intensive by commentators and the two community groups with experience of formally engaging with Part Three of the Act.

5.3 Barriers to Greater Use of the Crofting Community Right to Buy Provisions

The complexity of the crofting community right to buy process, together with concerns that it may be unworkable in practice represent the key barriers to greater use of the provisions. More generally, changes to the funding environment and support sources for community land ownership are also viewed as barriers in this regard. There are also potential tensions between the crofting community right to buy and recent reforms to crofting law and policy, in terms of individual versus community ownership, which may further preclude use of the provisions in practice.

5.4 Additional Wider Impacts of the LRSA on the Crofting Community Right to Buy

Six community groups have purchased land under crofting tenure, either immediately prior to the passing of the LRSA or thereafter. A number of these groups cite the Act in general, and the crofting community right to buy in particular, as significant in helping to bring about a successful conclusion to purchase negotiations with the relevant landowner.

5.5 Stakeholder's Experiences of Crofting Land Buyouts outwith the Act

All of the community purchases of land under crofting tenure since 2002 have occurred in the islands (the Small Isles, the Western Isles and Skye). Despite differing significantly in scale and scope, all of these initiatives share a focus on utilising local assets to maximise opportunities for sustainable development in the communities in which land is under community ownership. In all of these instances, the purchase process has had a less protracted timescale and been characterised by more amicable negotiations than experienced in the one case where an application to exercise the crofting community right to buy is currently being pursued.

5.6 Stakeholders' Proposals for Change

Proposals for change mainly relate to reducing the onerous nature of the mapping requirements when applying to exercise the crofting community right to buy and enabling more flexibility in the definition of a Crofting Community Body and crofting community. More generally, it is proposed that the Register of the Crofting Community Right to Buy should be made available on-line so that relevant documents and registrations can be easily accessed. There are also calls to make further funding available to assist in achieving crofting community buyouts using the Act and outwith the legislation.

6. Conclusions

6.1 Access Rights

For the most part the enabling ethos underpinning the statutory access rights contained in the LRSA appears to be working well. The Act has clarified access rights and responsibilities and while our primary research findings suggest some concern regarding

seemingly emboldened access-takers placing emphasis on their rights over an appreciation of their responsibilities, on the whole such behaviour appears to be a minority activity. There remain 'hotspot' access issues such as irresponsible wild camping, fire-lighting and perceived inadequate control of dogs, particularly near livestock or wildlife habitats. However, as a number of research participants pointed out, these issues pre-date the introduction of statutory access rights. There appears to be relatively little appetite amongst access stakeholders for significant changes to specific provisions in the Act or in relation to the Scottish Outdoor Access Code.

6.2 The Community Right to Buy

The community right to buy was seen as the centre-piece of the LRSA in the period prior to its enactment. Arguably that perception remains despite the fact that it has had little direct use in purchasing land or other assets for community ownership. There was widespread support amongst community groups participating in this research project for the community right to buy, and its democratising ethos of aiming to place land in community as opposed to private ownership when the opportunity arose was commended. Simplification of administrative processes is favoured by many research participants. More generally, calls for greater promotion of the community right to buy, together with more accessible funding to support community purchase and ownership are a constant refrain from within the community land ownership sector.

6.3 The Crofting Community Right to Buy

Many of the above observations in relation to the community right to buy are equally applicable to the crofting community right to buy. In particular the administrative challenges confronting a Crofting Community Body wishing to use Part Three of the LRSA make the crofting community right to buy an even more daunting process to embark upon than the community right to buy. All the more so given that its use risks an accelerating deterioration in 'crofting community-landowner' relations.

7. Concluding Observations

The research findings contained in this report indicate that there is widespread support amongst many stakeholders within Scotland for the objectives of the LRSA as they pertain to statutory access rights, community land ownership and crofting community land ownership. Findings from this study also raise fundamental questions which are of relevance to the community right to buy and crofting community right to buy provisions in particular. Specifically, what is the Act for in these regards? Is it to be the catalyst for directly facilitating community and crofting community ownership in line with the original vision of the Land Reform Policy Group? Or is it intended to have an indirect influence on these ambitions? If it is to be the former, there is merit in considering whether amendments to the legislation might better equip it to fulfil this role. More generally, further political consideration might also usefully be given to how community land ownership can be effectively resourced and otherwise supported outwith the auspices of the LRSA.

**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
POST LEGISLATIVE SCRUTINY OF THE LAND REFORM (SCOTLAND)
ACT 2003
CORRESPONDENCE FROM THE CONVENER TO THE MINISTER**

Implementation of the Land Reform (Scotland) Act 2003

I am writing to you following the Committee's short investigation into the implementation of the Land Reform (Scotland) Act 2003, in particular the provisions on access, the community right to buy, and the crofting community right to buy.

I am sure you will agree that post-legislative scrutiny is important, and that with the Parliament well into its second decade, we have now entered an appropriate period to undertake systematic scrutiny into the impact of the most significant Bills enacted in the early days of the Parliament's existence.

The Committee considered that the 2003 Act was an appropriate candidate for its first direct exercise in post-legislative scrutiny, given its legal and indeed symbolic significance as a milestone in the reform of Scottish land law.

As you will be aware, mainly owing to the scheduling of Bills, the Committee lacked sufficient time in its work programme to undertake an in-depth inquiry into the Act. Instead, we decided to commission research from the Centre for Mountain Studies. This is an appropriate point to put on record the Committee's gratitude to the Centre for undertaking this work with diligence and for producing a very clear and thorough report outlining their main conclusions, with which we are in broad agreement.

I am also grateful to you and your officials for giving evidence on 2 March. I discuss each of the three main aspects of the research identified above in turn.

Access

The Committee largely agrees with your opening comments on 2 March that the enabling approach of the 2003 Act in relation to access appears to be working well, and that there is little desire amongst stakeholders for any significant change.

The report also found that the 2003 Act had helped formalise and clarify access rights, where previously there was informality and ambiguity, which is a positive step. We recognise that some legal ambiguity still remains in relation to the meaning of the key terms "privacy" and "curtilage" largely because of a paucity of cases going to litigation. This can hardly be held against the legislation. We agree with you that, in any case, most walkers have a reasonable idea in practice of what is and is not a private part of someone's property and respect the distinction.

In relation to the suggestion that access authorities might be reluctant to test the definitions of these and other key terms in court, the Committee accepts that this is possible. However, the Committee also accepts that it is difficult to require authorities to take cases to litigation if it considers that the case for doing so is risky. This may point to the need for an alternative mechanism, short of litigation, to address concerns over access which are perceived to have been blocked unlawfully, although we accept the point you made in evidence that arbitration requires two willing participants.

The Committee invites the Scottish Government to consider consulting on whether it would be possible to introduce processes other than litigation to settle disputes over access so as to encourage parties to come to the table.

The Committee is reasonably satisfied that the Act has not led to a significant increase in what might be paraphrased as “irresponsible access”. Anyone exercising their access rights in an irresponsible manner is by definition not acting in accordance with the 2003 Act. The most that can be said is that, in enabling a cultural change in attitudes towards public access to land, the Act might have inadvertently encouraged some irresponsible behaviour, but even in this respect the evidence is not clear.

There are also those whose behaviour in accessing land might make them a danger to themselves and others (for example through allowing dogs to run amongst cattle during calving time or when calves are at foot). The Committee does not see this as a weakness of the 2003 Act so much as a failure of some people to appreciate the risks inherent in the countryside. In other words, it is more a public safety issue than an access issue. It seems to us that the best approach therefore lies in education and the effective dissemination of relevant information.

The Committee recognises and welcomes the fact that the vast majority of walkers exercise their access rights reasonably, in accordance with the letter and the spirit of the law. Where there are any concerns, the Committee sees local access forums as being the most appropriate places to deal with them in the first instance. We would welcome any further comments from the Scottish Government on this issue.

In relation to the requirement to draw up core path networks, we note that authorities have been moving at very different speeds. The CMS report suggested that resource issues might partly explain this. Written evidence from Ramblers Scotland² suggested that authorities in Scotland still lag behind in preparing lowland and urban footpaths to replace those lost over preceding centuries.

The Committee notes that SNH is on the point of publishing a report providing a national overview of core path plans and path provision, and expects that this will be of interest to our successor committee.

We note that some excellent work has been done in recent years, with encouragement from the Scottish Government, in developing long-distance paths but consider it important that the process does not lose momentum. Clearly, councils are under budgetary pressures at the present time and not all may consider core path planning a priority. Nonetheless the core path provisions in the 2003 Act are a statutory requirement, whilst long-distance pathways in particular can help bring in valuable tourist traffic to local areas covered by them.

The Committee invites the Scottish Government to consider how to offer leadership on the development of core path planning networks, including encouraging literal joined-up working between authorities to help create long-distance footpaths across Scotland.

The Community Right to Buy and the Crofting Community Right to Buy

The Committee notes that the purpose of the provisions on the right to buy were also ultimately about cultural change; about empowering communities in rural Scotland to take ownership (in the widest sense) of local assets and use them for the common good. The fact that the legislation requires communities to come together in order to make use of the right to buy provisions was seen, in itself, one of the strengths of the legislation.

The main concern uncovered in the report and in the evidence-taking is simply that these laudable aspirations have been to some extent confounded by the perceived complexity of the process, described in your own evidence as “convoluted and arcane”. Similar general comments could be made in the context of the crofting community right to buy, in relation to which you succinctly summarised the problem as being that the legislation is requiring community groups to behave like bureaucracies.

In other words, an issue perceived as one of the strengths of the legislation when it was agreed – that local communities would be the drivers of change – has not worked as well in practice as was hoped, largely because of the intricacy of the process.

For the Committee the solution is emphatically not to take away the power of initiative from communities and hand it to bureaucracies, but rather to learn from experience so as to make the process less onerous, whilst no less robust in terms of ECHR compliance.

In this connection, it is important to note that, despite the Act’s shortcomings, there are a number of success stories involving communities forming groups to take ownership of community land and assets, whether directly under the Act itself or in the shadow of its provisions. We are particularly pleased to note progress made in the Western Isles, where well over half of the land area is now community-owned. Whether or not directly inspired by the Act, this is part of the “cultural change” intended by the Parliament when the 2003 Act was agreed to. The key challenge is not to allow this momentum towards

increased community ownership, which the report identifies as faltering, to run out completely.

The Committee is clear that solving the main problems identified in the report is not simply a matter of improving the administration of both sets of right to buy provisions in the 2003 Act. There are parts of the Act itself that need to be amended. We are interested to note that this was also your view when you appeared before the Committee, and that you indicated that there was likely to be a Government review in the near future. We hope this work will be taken forward by the next administration. We also hope, and expect, that there would be extensive consultation with stakeholders as part of it.

We suggest that the proposed review should include consideration of the following matters:

- *time-frames*; The report identified concerns that the time-frames set out in the legislation can be over-burdensome and the committee noted with interest that this was a viewpoint with which you had considerable sympathy. The Committee sees this as a key issue for the future success of the legislation;
- *mapping*; in relation to the crofting community right to buy, the Committee considers a re-examination on the requirements in relation to hostile buy-outs as another key issue. In an effort to ensure ECHR compliance, the pendulum might have swung too far, making the current law extremely difficult for crofting communities to adhere to. Particular consideration should be given to the onerous mapping requirements set out in the Act;
- *covert or semi-covert sales*; there is a need to devise an improved approach under the Act for situations where land unexpectedly comes onto the market or where sales do not take place on an open market;
- *definition of “community body”*; The Committee was again interested to note that in your own evidence you saw this as an issue that required further consideration, and your linking of the issue to late registration;
- *re-registration of a community interest*. Despite the best efforts of Government officials, there is a clear perception that the process is more bureaucratic than it needs to be. (The Committee does accept, though, that as part of the re-registration process, there should be a requirement to demonstrate an ongoing interest, given the fact that circumstances on the ground, and indeed communities themselves, can change over time.);
- *identifying the owner*. If a community body, despite taking all reasonable steps to contact the owner, is unable to do so, this should not be allowed to frustrate the process, otherwise this creates a perverse incentive not to cooperate. The Committee notes that, under such circumstances, bodies such as the Registers of Scotland and the Rural Payments Inspections Directorate are highly likely to hold information that may be of benefit to a

community body, and suggests that the review investigate how this could be utilised;

- *promoting the right to buy outside the highlands and islands*; more broadly, the research has helped uncover that there is a requirement for ongoing work to inform communities about the right to buy. This applies particularly outside the highlands and islands or in small towns, where people may not be aware that the Act potentially applies to them. The community right to buy needs to be seen as a right belonging to small towns and rural communities across the whole of Scotland and applying not just to land but to under-used local assets that the community can put to purposeful use;
- *role of enabling bodies*. A closely related issue identified in the report is that Highlands and Islands Enterprise was seen as a “champion” for communities seeking to make use of right to buy provisions. Communities outside of the area covered by HIE do not have this support. We suggest that the review consider whether another body such as Scottish Enterprise could take on this role. Another option would be for HIE, which has the necessary expertise in-house, to take over this role for the whole of Scotland. (We understand that this is preceded in some other areas of HIE’s work.)

With the deadline for the dissolution of Parliament fast approaching, I realise that it may not be possible for you to send a reply to the points raised in this letter within the available time. I am also aware that even if you do reply it will not be this Committee that considers it. If you are unable to reply, I would be grateful if your officials could ensure that the successor committee to the RAE Committee receives a response after the election. It will be for that Committee to decide whether and how to take matters forward.

Maureen Watt MSP
Convener