1. SUMMARY

1.1 The Scottish Government has launched a consultation entitled Draft Crofting Reform (Scotland) Bill. This is described as the last step in the Scottish Government’s commitment to act on the findings of the Crofting Inquiry, the core remit of which was to develop a vision for the future of crofting.

1.2 The Consultation document poses a total of 28 questions throughout the document and is split into 5 separate chapters covering governance, the setting up of a crofting register, support for croft housing, occupancy requirements and crofting regulations. In Section 3 below a response has been made to the questions posed in the consultation. The response highlights the serious resource implications that some of the proposals being put forward in the Bill will have on the Council if they go ahead.

2. RECOMMENDATIONS

2.1 That Members give consideration to and agree that the detailed response as laid out in this report forms the basis of the Councils response to the Draft Crofting Reform (Scotland) Bill consultation paper May 2009 subject to any additional comments
3. BACKGROUND

3.1 During parliamentary debates in 2006 on the Crofting Reform etc (Scotland) Bill 2006, which has since been enacted, it was realised that there was a need to develop a vision for the future of crofting in the 21st Century, to guide any reforms. In order to take this forward Scottish Ministers announced their intention to create an independent Committee of Inquiry on Crofting in September 2006. The Chair, Professor Mark Shucksmith, was confirmed in December 2006. The Committee was tasked with developing a vision for the future of crofting and making recommendations for administrative or legislative changes that would be needed to realise that vision.

3.2 The Committee of Inquiry on Crofting worked with crofting communities and others in crofting areas during 2007. In May 2008 the Committee published its final report, referred to as the Shucksmith Report, which made a number of recommendations in six key areas covering land and environment, strong rural economies, affordable housing, governance, regulations and enforcement and young people and new entrants.

3.3 In October 2008 the Scottish Government published its response to the Inquiry findings and recommendations. These proposals, some of which form the basis for the current consultation, included:

- A new crofting bill and a consolidation on crofting law
- Reconstituting the Crofters Commission with up to six area committees that will include crofters elected by crofters
- Making Highlands and Islands Enterprise the lead organisation for the development of crofting communities
- Giving the Registers of Scotland responsibility for establishing a Register of Crofts
- Giving consideration to an occupancy condition on housing built on land taken out of crofting tenure to address speculation on croft land for second homes
- Undertaking a review of support for croft housing and support for croft agriculture with an emphasis on supporting new entrants to crofting
- Encouraging the creation of new crofts, especially on public land
3.4 Crofting is a system of land tenure and a croft is a small land holding regulated through the Crofting Acts and traditionally situated in the former crofting counties in the Highlands and Islands of Scotland namely Shetland, Orkney, Caithness, Sutherland, Ross-shire, Inverness-shire and Argyll. However Section 3A (1) of the Crofters (Scotland) Act 1993 (inserted by the 2007 Act) allows Scottish Ministers to designate new areas in Scotland where crofts can be created, with the approval of the Crofters Commission. Landowners can apply to the Commission to create new crofts.

3.5 A crofter is normally the tenant of a croft, and pays rent to the landlord of the croft. Rent is paid for the land only as any house, agricultural building, fence etc is provided by, and owned by the crofter. A crofter may own their own croft - which remains in crofting tenure. Crofting tenure gives wide-ranging rights to crofting tenants, such as:

- Security of tenure
- Fair rents
- Compensation for permanent improvements
- To pass on their tenancies to members of their families or
- To pass their tenancy to other third parties (with the approval of the crofters commission)
- To purchase either, their house site or, if they wish their croft as a whole, at a fixed price.

3.6 As stated earlier crofting is a significant and beneficial land tenure in Argyll and Bute but it is also fragile because of the small scale of its activities and its location in our more remote and fragile mainland and island areas. Based on 2003 survey data Argyll and Bute had over 700 crofts spread across much of the area but restricted to the old crofting county of Argyll. In locations such as Jura we have seen the creation of new crofts which has resulted in a number of young people returning to the island to take up these crofting tenancies. It is through the retention of and return of our young and economically active population that our more remote and fragile mainland and island communities will become more sustainable and crofting has a key role to play in helping to achieve this. Critical to achieving this is the provision of effective governance and development of crofting and the provision of the necessary financial support mechanisms.

3.7 Detailed below are the individual questions posed within the consultation document, some background information and the
associated comments for Members consideration.

3.8 CHAPTER 2 - GOVERNANCE

Question 1: Do you have any comments on:

(a) the proposal to make the Crofting Commission more democratic and accountable through the establishment of Area Committees?

(b) the area to be covered by each Area Committee?

(c) the process for Area Committee elections?

Proposed changes:

The findings from the Crofting Inquiry identified the need for a change to the governance arrangements relating to crofting and more specifically the need to separate the regulation and development functions. It was also recognised that arrangements should devolve power and responsibility towards communities. The Inquiry recommended that the Crofters Commission and its roles and responsibilities should be replaced by a new Federation of Crofting Boards – a single organisation comprising 7-10 elected Local Crofting Boards and a central executive supplying staff support, finance and other shared services.

Whilst the Scottish Government recognised and accepted the need to change the governance arrangements and to separate the regulation and development functions it considered that the Crofters Commission, a non departmental public body, should be retained given its experience and knowledge of crofting issues. However, it is recognised that there is a need to radically reform the Commission by clarifying its responsibilities and reconstituting it to make it more democratic and accountable. The Bill proposes that the Commission, which will be referred to as the Crofting Commission, should retain responsibility for crofting regulation and enforcement but that crofting development should be undertaken by the Highlands and Islands Enterprise (HIE). The focus of the Commission on regulation requires changes to the organisation.

To secure the Crofters Commission’s accountability and transparency at a more local level it is proposed to introduce 6 Area Committees which would cover both the existing Crofting Counties and the other crofting areas to be designated elsewhere in the Highlands and Islands under the 2007 Crofting Reform Act including Bute and Arran and the Cumbrae islands. The relevant Area Committee for Argyll and Bute will be Argyll, Bute, Arran
and Cumbrae.

The purpose of these Area Committees is to ensure that policies and decisions on regulation and enforcement better reflect the wishes and aspirations of the crofting stakeholders in each region of the Crofting Counties. It is considered that through devolving powers to crofters, problems faced by crofting communities such as absenteeism and neglect to croft land will be addressed more effectively.

The constitution of the Area Committees is designed to be representative of a number of interested parties in crofting. The Government response stated that each Area Committee might be expected to comprise up to twelve members, referred to as assessors, with the majority being crofters. Seven members of an Area Committee would be crofters elected by crofters and referred to as “elected assessors” ensuring that policies and crofting regulatory decisions represent the views of crofters in any given area. Two members would be nominated by the relevant Local Authorities and referred to as “local authority assessors”.

Having Local Authority representation on Area Committees would ensure that crofting regulatory decisions took account of Local Authority housing, planning and economic development policy. A further three members of the Area Committee, referred to as “appointed assessors” would be appointed by the Board of the Crofters Commission in order to ensure appropriate representation of other crofting interests, such as landlords and community trusts. Each Area Committee would elect its own Chair from amongst the crofter representatives and crofters would always be in the majority on the Area Committee and on the Commission itself.

The draft Bill contains powers for Local Authorities to hold elections to the Area Committees. It is proposed that elected assessors will be crofters elected by crofters through the Single Transferable vote (STV) system that is currently used for Local Authority elections in Scotland. It is proposed that the geographical area relating to each Area Committee will form one multi-member constituency, from which seven assessors will be elected from the crofting community. Elections would be held every five years.

Comments:

The Council recognise the need to reform the Commission in order to make it more effective and accountable. The Council agree that there should be a separation of the Commissions.
functions to enable the Commission to focus on the regulation and enforcement on the proviso that the necessary resources are put to this from the Scottish Government.

The transfer of the development arm of crofting to the Highlands and Islands Enterprise (HIE), which took place on the 1 April 2009, will require close liaison between HIE and the Council to ensure that the local authority development plan and Local Housing Strategy are taken into account and also that they in turn reflects the needs and development aspiration of the crofting community. It is unclear from this consultation as to the how HIE propose to take forward this new responsibility. The Council would welcome further discussion with the Scottish Government and HIE in respect of this.

The Council has a number of concerns with regard to the creation of the 6 Area Committees. In particular there will be resource implication from the local authorities’ perspective in attending the monthly Area Committee meetings. The two local authority representatives would be nominated from elected members as officers would be unable to sit on the Committee. One member would be from Argyll and Bute and the other from Arran and the Cumbrae islands which has just recently been designed as part of the crofting counties.

The proposal is to hold area committee meetings once a month. The extent of the geographical area covered by the Area Committee is significant and includes a number of crofting islands. The practicality of bringing people together as frequently as once a month and the cost associated with the setting up and running of these Committees will be significant. The concern is that this will simply introduce another layer of regulation and bureaucracy. Whilst the Council recognises the importance of local representation and greater engagement and accountability at a local level with the crofting community there are concerns as regards the independence of these Committees and the potential for local tensions and lobbying to influence decisions.

Given that 7 of the 12 members of the Committee are to be elected from the crofting community there may be a reluctance from crofters to put themselves forward for this role given the time they would have to give to this process which would take them away from their own work and also the costs incurred. The payment of expenses etc would be at the discretion of the Commission. An option for consideration as regards elected assessors would be that they would not necessarily need to be crofters however they would need to be voted on by crofters.
The Council consider that a preferred option would be to make better use of the existing structures, partnerships and functions, including the assessors network, which is widely valued and supported by the Government and supported in the Bill. The majority of the existing assessors are nominated by crofters. This would allow all the resources that would be put into the development of and running of the Area Committees to instead go directly into the Crofters Commission and to further develop the assessor’s network and improve on local partnership links. However there is no doubt that there is a need to secure local representation and closer partnership working at a local level.

There is also the concern that local authorities will be drawn into very local crofting issues relating to enforcement and regulation when in fact what is more relevant from the Council’s statutory function is to ensure that there is strong links with the development arm of crofting and that this is reflected in the local development plan process and in the development of housing strategy and policy by the local authority. This is not something that will fall within the remit of these committees.

The local authorities would be tasked with undertaking the elections for the Area Committee relevant to their area. Whilst there is little information on this at this time and further subordinate legislation would be required there is no doubt that there would be a significant resource implication both from a staff and financial perspective associated. It is unclear as to the assistance that would be provided to the local authority to undertake this function. There would need to be clear guidance associated with the election process itself and who would be defined as eligible to vote in respect of the “elected assessors”. It has been stated that the Crofting Register will be used to compile an electoral roll for Area Committee elections and this would certainly assist in defining those eligible to vote. The Council would seek further discussions with the Scottish Government in relation to the election process and significant resource implications.

**Question 2:** Do you have any comments on the proposed changes to the constitution of the Crofting Commission?

**Proposed changes:**

It is proposed to amend the constitution of Commission in order to reflect the creation of Area Committees. Currently, the Board of the Crofters Commission consists of a maximum of nine...
members (Commissioners), appointed by Scottish Ministers. It is proposed that the Board of the Crofting Commission will consist of nine members. Six will be Area Committee Chairpersons and three will be Ministerial appointees, one of whom will be the Convener. The inclusion of Area Committee Chairpersons will ensure that crofters represent the majority of Board members.

Comment:

The Council welcomes the proposed changes to make the Commission more democratic and in particular the proposal for more crofting representation. The Council also notes and welcomes the requirement for at least one Board member to speak Gaelic.

Question 3: Do you have any comments on:

(a) the proposed expansion of the powers and duties of the Crofting Commission?

(b) what the balance of costs to the individual applicant and the taxpayer for processing regulatory applications should be?

Proposed changes:

The proposals will require reform of the Crofters Commission to focus all of its resources on regulation, which will involve some changes to the organisation. The introduction of Area Committees will require elections and Crofting Commission staff will prepare regulatory cases for decisions by the Area Committees. It is expected that Area Committees will meet approximately once a month to consider regulatory applications. Powers have been included to enable routine decisions that have not been contested and which are consistent with area policy to be delegated to officers of the Crofting Commission. The Board of the Commission will review decisions taken by the Area Committee where a review has been requested, which it is hoped will reduce the volume of cases coming before the Land Court and avoid associated costs.

In order to cover some of its expenses, the draft Bill enables the Crofting Commission to fix and recover charges for services provided in the course of carrying out its functions. Accordingly costs have been drawn up associated with the processing of each regulatory decision. These application costs range from £500 for a Crofter forestry to £3,485 for a apportionments. With a renewed focus on regulation, the Commission should become more effective and efficient at handling regulatory casework, but the Government consider that the entire cost of regulation should not be borne by the taxpayer.
Comments:

The Council in previous responses to consultations relating to the reform of crofting has always highlighted the need for a greater focus on regulation and the need for a more proactive as opposed to re-active approach by the Commission. The Council therefore welcomes the expansion of regulatory powers and duties providing that this is backed up with the necessary resources. The introduction of an appeal mechanism to the Commission to review decisions taken by the Area Committees, without going directly to the Land Court, which can be a costly, time consuming and lengthy process is also welcome.

With regard to the setting of fees relating to regulatory function it is accepted that a fee is appropriate however the level of fees seem to be very high and these could well discourage crofters from considering transfer and other development proposals which could have a negative impact on crofting townships and the opportunities for future development.

Question 4: Do you have any comments on the draft Regulatory and Equality Impact Assessment on the Governance proposals?

Comments: No specific comments to those made above.

3.9 CHAPTER 3 – CROFTING REGISTER

Question 5: Do you have any comments on the identified regulatory trigger points that would require a first registration to be made in the Crofting Register?

Question 6: Do you have any views on the process for making an entry onto the Crofting Register?

Proposed changes:

The Crofters Commission has a duty under current legislation to compile and maintain a Register of Crofts. During its inquiry, the Committee considered the completeness and accuracy of the Register of Crofts. The Commission has had neither the resources nor the powers to compel people to provide the information needed to bring the register up to date. In order to remedy this the Bill proposes that there should be a separation of the Crofters Commission’s functions and that the Registers of Scotland should be responsible for establishing and maintaining a new register of crofting interests. This would be known as the Crofting Register.
The Scottish Government considers an accurate and current legal Crofting Register is a prerequisite to the effective regulation of crofting as well as being important to crofters in providing security and confidence over the extent and interests in a croft. The Crofting Register will have a status similar to that of the Land Register rather than as an administrative tool for the Crofters Commission. Therefore the draft Bill provides the power for the Registers of Scotland to establish and maintain a Crofting Register.

Legislation will require a croft to be recorded on the Crofting Register when regulatory actions are taken. The Government considers that these regulatory decisions have a significant effect on the extent or interests in a croft and are, therefore, suitable trigger points for requiring a new entry onto the Crofting Register. The draft Bill contains a power to vary the trigger points requiring a new entry onto the Crofting Register.

Comments:

The Council concur that an accurate and current legal Crofting Register is a prerequisite to the effective regulation of crofting. The Council, through the development plan and planning process, has always sought information from the Crofters Commission in respect of the location and boundaries of crofts to ensure that development plan policy, local housing strategy and planning decisions took account of existing crofts. However there has always been difficulty in getting full and accurate information from the Commission on this and therefore the Council welcomes the creation of the Crofting Register. The triggers in respect of registration would appear to cover most situations. The Council welcomes that fact that owner-occupiers will also require to register their croft. This is also consistent with the Committee of Inquiry’s recommendation that crofters and owner-occupiers should be treated alike.

It is proposed that the Crofting Commission should be able to maintain the current register until such time as it has been completely replaced by the new register. However the need for the new registration process has come about due to the fact that the Commission have stated that they do not have the resources nor the powers to compel people to provide the information needed to bring the register up to date. There is therefore still a need to identify additional resources in the short term to allow the Commission to properly carry out this function.

Question 7: Do you:
(a) agree with the type of information to be held on crofts in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

The Council welcomes the creation of the Crofting Register and the information that will be contained within it. It is important that this information will be map based and will be in a format that is compatible with the map based systems operated by key public organisations such as local authorities who will be looking to access it on a regular basis. The key issue will be ensuring that boundaries are recoded accurately and accessing this information may well be complex and time consuming especially where this involves boundary disputes. There may be significant delays in the process if these become numerous and complicated.

Question 8: Do you:

(a) agree with the type of information to be held on common grazings in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

The Council welcomes the fact that information will be held on common grazing in the Crofting Register. As a local authority it is important that we are aware of the location of the areas of common grazing in order to be able to protect this land from future development. However, as above, there are concerns as to how easy it will be to access this information and translate it into an accurate map format.

Question 9: Do you consider the balance of costs between the applicant and the taxpayer in respect of registration to be correct and/or what level of registration fee do you think would be appropriate?

Comments:

The Registers of Scotland is required to cover the costs incurred through its administration of the Crofting Register. As such, the draft Bill provides the Registers of Scotland with the ability to charge a reasonable fee in accordance with the Registers of Scotland’s standard fee schedule for making a first registration on the new register and any subsequent
amendments.

The aim is to make the costs of registering on the Crofting Register broadly comparable with the charges made for registering property in the Land Register. The average fee for an application for registration of a property for the first time in the Land Register is in the region of £250. It is proposed that the cost of making a first registration on the Crofting Register and any subsequent amendments would be met by the person applying to register the croft in the Crofting Register, although the Government will have the power to subsidise the cost of first registration.

Whilst a cost of £250 may not seem too high there is a concern that when this is taken with the cost of the regulatory application which triggered the registration, it may act as a further deterrent to those who may have been looking to change the occupancy of the croft or to undertake development such as sub division or extension.

**Question 10:** Do you have any comments on the proposal to allow persons with an interest to challenge the details of a croft or common grazing being registered on the Crofting Register?

**Comments:**

The Council supports the proposed ability to challenge the details of a croft or common grazing registration,

**Question 11:** Do you have any comments on the draft Regulatory and Equality Impact Assessment of the proposals for the development of a new and definitive Crofting Register?

**Comments:** No specific comment other than those above.

### 3.10 CHAPTER 4 – SUPPORT FOR CROFT HOUSING

**Question 12:** Do you have any comments on the proposal that tenant crofters should be able to use their croft tenancy as security for a loan?

**Proposed changes:**

It is clear from the sale of crofts and croft tenancies that crofts have a commercial value. Crofts have a capital value, in that they can either be sold outright or the tenancy can be sold (with the assignation subject to the agreement of the Commission). Moreover, for crofting tenancies, the outgoing tenant is entitled to be compensated for any permanent improvements made to the
croft such as houses, farm offices, drains, walls, fences, etc. whether the crofter voluntarily departs or is removed from the croft. A croft also has income value, in that it can be used to generate income through a number of means, such as farming, subsidy income, and through letting out additional houses on the croft as holiday homes.

However, it is currently difficult for crofters to use this asset as security for obtaining loan finance. In particular, tenant crofters are unable, under the current law, to grant a standard security over their tenancy. Instead, tenant crofters are usually required to exercise their right to buy so that they can then grant a standard security over the croft land that they own. In order to make the secured asset more attractive to lenders, the land usually needs to be decrofted so that it is not subject to crofting regulation.

The Government’s proposals in the draft Bill will, subject to agreement of the creditor to lend, enable tenant crofters to secure a loan against their tenancy and provide greater confidence for lending institutions so that tenant crofters do not need to purchase and decroft any part of their croft to secure a loan. This is consistent with the Government’s objective to retain land in crofting tenure and to protect the link between a croft and the croft house.

Comments:

Whilst the Council can understand the principles behind this proposal there is concern that in the present economic climate, lenders may be hesitant to offer a loan against the standard security taken over a croft tenancy.

The proposal provide crofters with an option, should they wish to take it, that would allow them to raise finance for their croft without having to decroft and remove croft from crofting tenure. However crofters may well feel that there is too much at stake to pursue this option and the Council can understand the concerns being expressed by the crofting community. A crofter would lose everything if they defaulted on the loan.

In light of the above the Council would welcome discussions with the Scottish Government to investigate the options available as regards providing a secure loan to allow the delivery of affordable croft housing.

Question 13: Do you have any comments about the process for granting and discharging a standard security over a crofting tenancy?
Proposed changes:

The draft Bill includes provisions that enable crofters to take a standard security over a crofting tenancy. In most cases, the Government fully expects loans to be repaid in full and the security to be discharged as is normally the case. Where a crofter is taking a standard security over a croft the following steps must be followed:

Step 1 – Registering the tenancy on the Crofting Register – obtain a tenant registration certificate which will bring legal certainly to extend of and interest in the croft.

Step 2 – Granting the standard security - becomes a real right itself when registered in the Crofting Register.

Step 3a – Crofter repays loan and the security is discharged.

Step 3b – Crofter defaults on loan and the creditor will have the option of calling up the security and will have a number of options including assigning the tenancy, taking possession of it, or, if necessary, taking full title to the tenancy by obtaining a decree of foreclosure.

Step 4 – Discharging the standard security-discharge must be recorded in the Crofting Register.

Comments:

As stated above the current economic climate may deter lenders from considering this. Defaults could be particularly difficult for lenders to understand and process and they may see their best option as taking full title to the tenancy which would undermine the whole aim of introducing this in the first place. The likely hood of lending institutions being aware of and familiar with the intricacies of crofting legislation is slim and this may also deter them from even considering these loans as being good business investments in the first place. It is however difficult to say what the take up of this would be and the percentage of defaults.

Question 14: Do you have any comments on the proposed modifications to rights and responsibilities when a standard security is granted over a croft?

Comments:

The Council consider that in general the conditions proposed seem reasonable where a standard security is granted, and
will be a minimum requirement for any creditor. The concern again is that this option may be less attractive to the crofter than de-crofting, as the modifications place restrictions on use and occupancy of the croft.

**Question 15:** Do you have any comments on the proposed modifications to rights and responsibilities when a creditor enforces the security?

**Comments:**

As above

**Question 16:** Do you have any comments on the draft Regulatory and Equality Impact Assessment for support for croft housing?

**Comments:** No additional comments other than those above.

3.11 CHAPTER 5 – OCCUPANCY REQUIREMENT

**Question 17:** What are your views on the principle of an occupancy requirement applying to houses built on land taken out of crofting tenure?

**Proposed changes:**

In some desirable locations, it is considered that the ease of de-crofting can result in an overinflation of the market value of croft land, resulting in prices for crofts that potential crofters cannot afford. Speculation on the development value of croft land is considered to be inflated by the potential use of housing for second homes (either land for development or existing housing). This has resulted in an incentive to crofters to take land out of crofting tenure, thereby reducing the link between a croft house and croft, and steadily eroding the amount of land in crofting tenure.

In order to address the above the Bill proposed that an occupancy requirement should be imposed where land has been taken out of crofting tenure. For land remaining in crofting tenure, the Government considered that better enforcement of existing legislation relating to croft land, which requires crofters to live on or near their croft as well as put the land to some form of productive use, would address current issues relating to absenteeism and neglect.

The occupancy requirement would require any house on land that has been taken out of crofting tenure to be used as a main place of residence. The enforcement of this requirement would not be a matter for the crofting regulator, but for the relevant Local
Authority. The Government considered that, if such an occupancy requirement were introduced, the Local Authority would be able to apply the sort of enforcement action it takes to secure compliance with the conditions of planning consent if the occupancy requirement were not being met.

The purpose of the occupancy requirement is to:

• Discourage decrofting for the purpose of building houses that will not be used as main residences

• Discourage the separation of croft houses from the croft

• Ensure that croft land remains affordable to those wishing to take up crofting.

The occupancy requirement will not prevent decrofting for the purpose of housing where there is demand for housing that will be used as a main residence. It is recognised that it is important to ensure land is available for housing development. Where croft land is used for housing that will be used as a main residence, this may offer greater benefits to the community than retaining the land in crofting tenure.

Comments:

Whilst the Council may understand the reason behind the principle of seeking to impose the occupancy condition on land taken out of crofting, namely to discourage the separation of croft housing from the croft, the Council has significant concerns relating to the enforcement of this condition through the local planning authority. The occupancy condition is being imposed through the crofting legislation and should be enforced by the relevant crofting authority namely the Crofting Commission especially as the Commissions remit is now solely one of regulation.

The local authority does not have the resources to enforce this condition on behalf of the Commission and also questions the enforceability of such a condition from a practical point of view. The Council has a duty to ensure that it delivers on its own statutory responsibilities in line with the Single Outcome Agreement without taking on additional responsibilities on behalf of another organisation.

Question 18: Do you have any comments on:

(a) the length of time required to be resident in a house in order to meet the occupancy requirement?
(b) other aspects of the attachment and administration of the occupancy requirement?

**Proposed changes:**

The owner of any residential accommodation built on land taken out of crofting tenure would be under a duty to ensure that any such accommodation is used as a main residence. It would be for the owner to ensure that the same individual, being the owner or a tenant, resides in the accommodation concerned for a minimum of 183 days in any calendar year, ie just over half a calendar year, resulting in the property being used wholly or mainly as a dwelling and not just as a second or holiday home.

The draft Bill includes provision to attach the occupancy requirement to land taken out of crofting tenure after 12 May 2008. To ensure the legislation works fairly and reasonably to those subject to the occupancy requirement, the draft Bill proposes that any enforcement action would only consider occupancy from the date the provisions are brought into force – no account would be taken of any absenteeism before that date, but all land decrofted on or after 13 May 2008 would be subject to the requirement.

The draft Bill provides for the Local Authority for the area in which the property is situated to administer the occupancy requirement. On introduction of the occupancy requirement, the Local Authority would be able to take the sort of enforcement action taken to secure compliance with the conditions of planning consent if the occupancy requirement were not being met.

The Scottish Government consider that the occupancy requirement is a tool that Local Authorities will be able to use to protect croft land. The Local authority would have the discretion to remove the requirement where it is considered to be unnecessary and to suspend it where it is not appropriate at any given time. Where croft land is under pressure, the occupancy requirement would be useful in ensuring that the land is only used for housing that will be used as a main residence, which crofting communities in their area may find more acceptable.

**Comment:**

The Council has significant concerns in respect of the policing and enforcement of the occupancy condition. As a Planning Authority we would not impose a use restriction conditions on crofting properties as this would not meet the six planning tests of reasonableness and therefore we would be unwilling to do this on behalf of another organisation.
The potential resources that would be required to oversee the enforcement of this condition would be significant and there is a significant question mark over the reasonableness of imposing such a condition and also on providing proof that the condition has been breached before pursuing formal enforcement action. To police this condition would require information to be gathered that the occupier was in breach of the condition i.e. that they had not occupied the dwelling for a minimum of 183 days. Given the sheer scale of the geographical area covered by the crofting counties in Argyll and Bute, many of which are islands it would be impossible to monitor such a condition.

As stated above this condition would be imposed under the Crofting Reform Bill, a piece of legislation for which the Council has no statutory responsibility and yet as a local planning authority we are being asked to monitor and enforce this condition. This in itself does not seem reasonable.

**Question 19:** Do you have any comments on the proposed exceptions to time considered as being absent for the purpose of the occupancy requirement?

**Proposed changes:**

The draft Bill provides for situations where it would be unreasonable to regard a person as being absent from his or her residence for the purposes of fulfilling the occupancy requirement, whether that person is the owner or the tenant. It is proposed that the following periods of absence would be disregarded and not taken into account when determining the length of absence which results in the breach of an occupancy requirement:

**Comments: As above.**

**Question 20:** Do you have any comments on:

(a) the proposals for extinguishing, suspending and reinstating the occupancy requirement?

(b) whether or not Local Authorities should be able to zone areas where it would extinguish the occupancy requirement as a matter of policy?

**Proposed changes:**
The Local Authority would have discretion, on application in writing by the owner, to extinguish or suspend the occupancy requirement. The Government would issue guidance to Local Authorities as to the matters they should take into account in deciding whether or not to grant an application for extinction or suspension.

An alternative approach would be to empower the Local Authority to apply the occupancy requirement either when granting planning consent or at the point of decrofting. However, it seems more appropriate for crofting law to apply the requirement as an effective condition of decrofting and for the Local Authority to be permitted to lift the occupancy requirement as a matter of housing and planning policy. This approach will not prevent the Local Authority from zoning areas in which the occupancy requirement would generally be lifted.

Comment:

The Council consider that this would impose a significant burden up them as regards the enforcement of this condition and would involve the Council in implementing what is a clear crofting issue that will be imposed under the Crofting Bill. The Council is greatly concerned about the resource implications of this to them as a local authority and the impact that it could have on their own service delivery and targets.

Question 21: Do you have any comments on the proposals relating to the enforcement of the occupancy requirement and the right of appeal?

Proposed changes:

The draft Bill provides Local Authorities with powers of enforcement, and related duties, as failure to comply with an occupancy requirement would result in the imposition by the Local Authority of a civil penalty (fine). The burden of proof would be on the balance of probabilities and the burden should be on the Local Authority to prove that the occupancy requirement has not been met.

The draft Bill provides for a power to make enquiries as to whether the owner of property subject to an occupancy requirement is complying with it. In carrying out its enquiries, and in enforcing the occupancy requirement, Local Authorities will have power to appoint officers to enforce the new requirement. Local Authority officers’ proposed powers for
carrying out enforcement functions are stipulated in the draft Bill.

The draft Bill provides a procedure to be followed by a Local Authority which is satisfied that there is enough evidence to impose a fine. Evidence will vary from case to case and could be wide-ranging. Evidence that would support a fine might include a number of witness statements, employment details of the owner/tenant which might confirm that they are not resident at the address for more than 183 days and any observations made by the Local Authority officer at the address. A person claiming a council tax rebate or any other property related discount for the address as it is a second home, would also constitute evidence.

Comments:

As stated above the Council has significant concern relating to the role that is being passed to them as regards the occupancy condition. This would be extremely difficult to enforce, would have significant resource implications and is not something for which they currently have a responsibility for.

Question 22: Do you have any comments on the draft Regulatory and Equality Impact Assessment of the occupancy condition?

Comments: No additional comments

CHAPTER 6 – CROFTING REGULATION

Question 23: Do you have any comments on the proposed definition of an owner-occupier?

Proposed changes:

The draft Bill contains sections that will attach to owner-occupier crofters a number of provisions in the Crofting Acts that currently only apply to tenant crofters. This will help to ensure that both tenant crofters and owner-occupier crofters are treated in a similar way. Because of the differences in the rights between tenants and owners of land, the processes for enforcement are slightly different for owner-occupiers than for tenants. The effect of the draft Bill is to more clearly define when the Crofting Commission would be expected to use the powers provided for vacancy provisions in the Crofting Acts.

Comments:

The Council fully supports the view that owner-occupiers and tenant crofters should be treated alike particularly as regards
the need to live on or near the croft and in terms of purposeful use.

**Question 24:** Do have any comments on the proposals that are designed to help achieve greater equality in the treatment of tenant and owner-occupier crofter and help to free up crofts for new entrants to crofting?

**Proposed changes:**

In addition to ensuring that existing working the land and residency requirements apply equally to both tenant and owner-occupier crofters, it was clear from evidence given to the Committee of Inquiry that more effective action was needed to address absenteeism. The Government has considered the absentee provisions in the Crofting Acts carefully and has made provision in the draft Bill, which would require the Commission to take action to address absenteeism unless there is good reason not to. The policy attempts to remedy absenteeism by agreement, failing which action must be taken to resolve the issue.

**Comments:**

The Council recognises that critical to the long term sustainability of crofting is the need to encourage new entrants into crofting particularly in the fragile areas. In this regard the Council welcomes these proposals. Similarly the council welcomes the proposals to require the working of the land. However common to all these aspiration is the need to secure the necessary resources to allow for this to be enforced equitably across all areas. It is hoped that this will secure additional opportunities for new entrants. Establishment of an accurate Crofting Register is fundamental to this objective.

**Question 25:** Do you have any comments on the proposals in the draft Bill that are designed to enable the Commission to take more effective action against absenteeism?

**Proposed changes:**

One of the statutory conditions is that crofters must cultivate their land or put it to purposeful use. The Government response to the Committee of Inquiry report agreed to review existing legislation to ensure that the regulator can take more effective action to ensure that this requirement is enforced. Land is our most basic natural resource and it is important to ensure that it is put to productive use in order to achieve the goal of sustainable economic growth.
Currently, the Commission does not have the power to take direct action against a crofter who fails to work the land unless it receives a complaint regarding breach of statutory conditions or receives the consent of the landlord to take action in respect of misuse or neglect. The draft Bill contains a provision which would enable the Commission to take action where land is not being put to productive use without requiring a complaint to have been made or requiring the consent of the landlord.

Where the Commission identifies a croft that is being misused, is being neglected or is not being put to any purposeful use, then the Commission would be required to give written notice to the crofter of this determination. The crofter would be required to submit plans for cultivating the croft or putting the croft to some purposeful use within one month of receiving notification from the Commission. Alternatively, the crofter could make an application to sublet the croft. Any plans would be required to be approved by the Commission and include actions against which progress could be monitored. In the event that a crofter fails to produce a plan or to implement the plan, the Commission would take action.

For tenant crofters, it would make an order terminating the tenancy and declaring the croft to be vacant. Landowners would then be invited to submit proposals for re-letting the croft. For owner-occupiers, the croft would be declared as being vacant and the owner-occupier would be invited to submit proposals for letting the croft.

Comment:
The Council welcomes this pro-active approach to tackling absenteeism.

Question 26: Do you have any comments on the proposals in the draft Bill to enable the Commission to take more effective action where a croft is not being put to productive use?

Comments:
The Council recognises the importance of ensuring that a croft is put to productive use and is very supportive of the aim of the proposals. Land use is a major economic consideration in Argyll and Bute and the concerns regarding land abandonment and the impact on fragile rural communities has been previously raised with the Scottish government. Our environment is one of our key assets and it is critical to it is put to the best use to secure a sustainable future for our communities. The challenge will be in defining “purposeful” or “productive use” and thereafter ensuring
that the croft is put to that use. This is where it is felt that there is a need to ensure a partnership approach with all the relevant agencies and crofting communities to develop and draw up a development plan for the crofting townships which everyone signs up to delivering.

**Question 27:** Do you have any comments on the draft Regulatory and Equality Impact Assessment for the proposed changes to crofting regulation?

**Comments:**

No specific comments.

**Questions 28:** Do you have any additional comments on the Consultation Paper and Draft Bill?

**Comments:**

As stated by the Council in previous submission it is seen as critical to create an environment that encourages and provides support for new entrants into crofting. In this regard the Council welcomes the fact that work is ongoing in relation to the review of support for croft housing and agriculture with a view to providing additional support for new entrants into crofting.

The Council would reiterate the fact that it is critical that the necessary resources are provided to the Crofters Commission to allow for a pro-active regulation of crofting.

The transfer of the developmental component of crofting to HIE through Growth at the Edge will hopefully help to stimulate employment and opportunities within crofting communities all of which will assist in the development of crofting for future generations. The Council consider that it is imperative that there is close liaison between HIE and the local authority and that any development proposals are fed into and reflected in the local development plan and the development of housing strategy/policy by the Council to ensure that there is a joined up approach to development.

4. CONCLUSION

4.1 The Council consider that a continued crofting presence is
fundamental to the maintenance of a working countryside, a managed landscape and to the wider economic and social viability of Argyll and Bute’s rural communities. The Council welcomes the proposed changes to the governance arrangements relating to crofting and more specifically the need to separate the regulation and development functions providing that the necessary resources are provided to both the Crofters Commission and HIE to ensure that these organisation are successful in their delivery. It is also critical that the local authority is engaged in teh development process with HIE to ensure that the development plan and the local housing strategy are aligned with the aspirations and needs of the crofting community.

4.2 The Council also recognises the need to take account of the views and aspirations of the local crofting communities but is not convinced that the creation of Area Committees will achieve the outcome that the Scottosh Government is seeking. The Council strongly opposes the proposal that they are to be passed responsibility for the enforcemtn of the occupancy condition proposed in the Bill and would urge the Government to re-investigate this approach. There is concern that the Bill will not necessary achieve all that it is seeking to do and in particular will not be supported by the crofting community and will not help deliver the key aim of securing crofting for future generations.

4.3 A number of the components of the Bill such as the Area Committee structure and the introduction of the occupancy condition will have significant resource implications for the Council both financial and from a staff perspective. In addition there would be a knock on effect on the effective delivery of our strategic objective. The Council would strongly urge the scottish Government to reconsider these aspects of the bill in consultation with them.

5. IMPLICATIONS

Policy: Responding to the Draft Crofting Reform (Scotland) Bill assists the Council in delivering our commitment to securing our key objecvtives in the Corporate Plan and the local outcomes within the Single Outcome Agreement relating to Vibrant Communities, Outstanding Environment and Forward Looking.

Financial: There are no immediate resource implications
linked to this paper however there are considerable resource issues which will be incurred should the Bill go ahead in its current form allied to the local authority having responsibility for undertaking the election to the Argyll, Bute, Arran and Cumbrea Area Committee, providing two local member representatives to this Area Committee and more significantly the policing of the occupancy conditions, which the Council does not support.

Personnel: None

Equal Opportunity: None

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LIST OF BACKGROUND PAPERS:
Draft Crofting Reform (Scotland) Bill Consultation May 2009 available at http://www.scotland.gov.uk/Publications/2009/05/11145108/0

Copy also available in the Members Lounge