

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 14 June 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

21st Meeting 2006, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

*Richard Lochhead (Moray) (SNP)

*Maureen Macmillan (Highland and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Rhona Brankin (Deputy Minister for Environment and Rural Development)

Ethel Burt (Scottish Executive Legal and Parliamentary Services)

Derek Flynn (MacLeod and MacCallum Solicitors)

Simon Fraser (Anderson MacArthur and Co)

David Green (Crofters Commission)

Professor Jim Hunter

Norman Leask (Scottish Crofting Foundation)

Johnnie Mackenzie (Scottish Rural Property and Business Association)

John MacKintosh (Scottish Crofting Foundation)

Donald Murdie (Scottish Crofting Foundation)

Shane Rankin (Scottish Executive Environment and Rural Affairs Department)

Iain Turnbull (National Trust for Scotland)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 14 June 2006

[THE CONVENER *opened the meeting at 09:34*]

Interests

The Convener (Sarah Boyack): I welcome people to the Environment and Rural Development Committee. I invite everyone who has a mobile phone or a BlackBerry to turn it to silent. If it is left switched on, I ask them to ensure that it is not near a microphone, otherwise the sound system will pick it up and we will hear strange noises later on.

We have no apologies this morning. I welcome members of the committee, witnesses and the members of the press and public who have joined us in the public gallery.

Agenda item 1 is a declaration of interests. On 8 June, the Parliament agreed that Eleanor Scott should replace Mark Ruskell as the Scottish Green Party representative on the committee. I welcome her to the committee. She has been on the committee before and has volunteered to come back again.

The members' code of conduct states:

"It has been established as good practice that members should declare interests relevant to the remit of that committee at the first meeting of the committee"

that they attend. Therefore, I invite Eleanor to declare any relevant interests.

Eleanor Scott (Highlands and Islands) (Green): Thank you. It is nice to be back. I declare that I am a member of WWF and Friends of the Earth Scotland.

Deputy Convener

09:35

The Convener: Item 2 is the choice of deputy convener. The Parliament agreed at the start of the parliamentary session that members of the Scottish Green Party are eligible for nomination as deputy convener of the committee. Therefore, I seek nominations of members of that party for our deputy convenership.

Mr Alasdair Morrison (Western Isles) (Lab): I nominate Eleanor Scott.

The Convener: I think that Eleanor Scott is the only eligible person. Does the committee agree that she be chosen as the deputy convener of the Environment and Rural Development Committee?

Members *indicated agreement.*

The Convener: That is unanimously agreed.

Eleanor Scott was chosen as deputy convener.

Crofting Reform etc Bill

09:36

The Convener: The main item of business today is item 3, on the Crofting Reform etc Bill.

Before we start the round-table discussion, I say for the record that the clerks and I have discussed the cut-off date for people to put representations to us for our consideration in drawing up our report and we have agreed to set Friday of this week as the final date for submissions. We have received a huge amount of information, but we need to draw a line somewhere. Friday is a reasonable cut-off date that will enable us to read everyone's comments. I would be grateful if people would pass on that information.

The purpose of the round-table session is to allow the committee to consider with a range of individuals and organisations the Scottish Executive's proper occupier proposals. The proposals were made after we had issued a call for evidence, but we feel that it is important that we undertake proper scrutiny of them. We are using the round-table format instead of taking evidence from small panels of witnesses. We want there to be some dialogue and discussion between witnesses. Such a discussion is also a relatively time-efficient way of getting a good range of different witnesses around the table to enable the committee to complete its inquiry.

I would like a good-going discussion, but I will set some ground rules to make it happy and fair. It is not just a question-and-answer session, but I ask participants to make their contributions through me as the convener. I will say people's name to ensure that the *Official Report* has everybody's name recorded accurately.

People should indicate that they want to speak by raising their hand and trying to catch my eye. I know that that can become difficult as the meeting goes on. I ask people to be patient as I usually have a huge list of people, but I will try to balance the debate to give everyone the opportunity to comment.

We aim to complete our discussion by about 11 o'clock. I will be slightly lenient if I feel that we are gathering some important information and are making good headway, but I want to finish at around that time so that we can have our next discussion with the minister and conduct other committee business.

I will start by going round the table so that everyone knows who everyone else is. I will still ask people to give their name the first time they speak. I will kick off with our new deputy convener.

Eleanor Scott: I am an MSP for the Highlands and Islands and I now have the honour of being the deputy convener of the committee.

Richard Lochhead (Moray) (SNP): I am the Scottish National Party MSP for Moray.

Rob Gibson (Highlands and Islands) (SNP): I am an SNP MSP for the Highlands and Islands.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I am a Conservative MSP for Mid Scotland and Fife.

Norman Leask (Scottish Crofting Foundation): I am chair of the Scottish Crofting Foundation.

Derek Flyn (Macleod and MacCallum Solicitors): I am a crofting lawyer.

Johnnie Mackenzie (Scottish Rural Property and Business Association): I represent the Scottish Rural Property and Business Association. In my own right, I am a crofting landlord.

Professor Jim Hunter: I am Jim Hunter and I represent nobody but myself.

The Convener: We know that you have written a couple of books.

David Green (Crofters Commission): I am the chairman of the Crofters Commission.

Donald Murdie (Scottish Crofting Foundation): I am the land use projects manager at the Scottish Crofting Foundation.

Iain Turnbull (National Trust for Scotland): I am the estate manager for Balmacara estate and I represent the National Trust for Scotland.

John MacKintosh (Scottish Crofting Foundation): I am a member of the Scottish Crofting Foundation's crofting law group and I am a crofter.

Simon Fraser (Anderson MacArthur and Co): I am a crofting lawyer and a crofter.

Mr Morrison: I am the Labour MSP for the Western Isles.

Maureen Macmillan (Highlands and Islands) (Lab): I am a Labour MSP for the Highlands and Islands.

Elaine Smith (Coatbridge and Chryston) (Lab): I am the Labour MSP for Coatbridge and Chryston.

Nora Radcliffe (Gordon) (LD): I am the Liberal Democrat MSP for Gordon.

The Convener: We also have with us two members of official report staff, who will record every word that people say in the meeting, and our two clerks—Katherine Wright and Mark Brough—who will help us through the meeting.

Everyone has been introduced. I will attempt to keep the meeting fair and to cover all the questions. I will ask the first question.

We are here because the proper occupier proposals have been suggested as part of the solution to the issues that have been raised in the evidence that we have taken in the past few weeks. I will kick that across to the witnesses. What problem are the proper occupier proposals meant to address? Will they achieve that? Who would like to kick off and volunteer an opinion?

Derek Flynn: In 1976, Parliament gave crofters the right to purchase their crofts, but the Crofting Reform (Scotland) Act 1976 took little account of what would happen to a crofter who purchased his croft. It took some time for lawyers to understand that buying a croft meant that a crofter was no longer entitled to occupy it but was now the landlord of a vacant croft.

The proper occupier proposals seek to make it necessary to identify who should occupy a croft that a crofter has purchased. That has been missing from the law since 1976, because the law still stands as though every croft has a landlord and tenant. With stunning simplicity, the proper occupier proposals will make it clear that every croft should have someone identified by the tenant or the proper occupier as living on or beside the croft. I support the proposal.

The Convener: Why has it taken 30 years to produce a solution to an issue that was not dealt with in 1976?

Derek Flynn: I am a practical lawyer and I try to find the answer in what is written. In previous evidence, I sought to identify who the occupiers of crofts should be. At one stage, we would identify who might become a crofter based on their economic status or blood-lines. Those are not proper ways of identifying who should occupy a croft. Residence and commitment are the proper ways of identifying who should occupy a croft.

David Green: I agree with Derek Flynn that the proposals have the potential to clarify the rules. They set a reasonable framework, so that people know what the rules are, and they could damp down the market, because they will act as a disincentive to people not working a croft.

The only protection for owners who live on crofts at the moment is a policy protection of the Crofters Commission, which could change with the next board of the commission, if there is a next board. The proposals set a good legislative framework. The rules should be clearly understood by everyone and should help active use of crofts.

09:45

John MacKintosh: It has not taken 30 years to uncover the issue. In fact, a group that met in 1998 was aware of it and said that owner-occupiers and tenants should have the same status. The problem that I have with the proper occupier proposals is that they identify only owner-occupiers. The group that I mentioned tried to give equal status to the two types of crofter, with the rules applying to both. There was consensus in the group, which involved the Scottish Landowners Federation, the then Scottish Crofters Union and the Crofters Commission. Sir Crispin Agnew chaired the group and the secretary of the commission was involved. I was surprised that the project was not taken further at the time and I am surprised that we are now trying to move in reverse. I think that the committee is as surprised by that as I am.

Simon Fraser: Notwithstanding that issue, the proposals are most certainly better late than never. I am at one with Derek Flynn and David Green on the issue. The existing situation is a legislative fudge. When a person becomes the landlord of a croft, if they are not resident, the croft may be regarded as vacant and so the Crofters Commission may require them to re-let the croft. I do not know how many times that has happened, but I suspect that the Crofters Commission has been reluctant to push the boat out on more than a few occasions. That is the major failing in the present system. Although a considerable amount of regulation is in place in respect of croft tenants, once a croft is bought, it falls out of the regulatory mechanism. If all crofters are to be treated on an equal footing, as John MacKintosh suggests, we simply must have a regulatory mechanism for owned crofts that is similar to the one for tenanted crofts.

As my submission suggests, it is absolutely essential that the Crofters Commission be given strong powers and be prepared to use them. If the powers are not used, it will simply be assumed that ownership of a croft is, as at present, a way out of being regulated.

Iain Turnbull: The National Trust for Scotland welcomes the attempt to deal with the problem. I agree with what Derek Flynn and Simon Fraser said. Broadly speaking, the proposal seems to be that owner-occupiers should be treated in relation to occupancy and use in the same way as tenants, which is a good concept. Unfortunately, the history of the regulation of tenants and their use of crofts has not been particularly good and does not appear to have worked well. There is a lot of dereliction of crofts, because people do not use them, irrespective of whether they are resident. There is not a great deal in the proposals that gives us comfort that the new mechanism will be

any better at overcoming that for owner-occupiers, never mind for tenants.

In a sense, that is what Simon Fraser just said. Our main concern is not so much about the principle, which we support, as about the detail. We are concerned about whether the measures will be enforceable, whether the commission will have sufficient resources to enforce them and whether there will be the political will to enforce them. Without that, we will create another bit of legislation that just sits on the shelf. History has shown that tenants are not regulated properly, so why should the new situation be any different?

Professor Hunter: As I stated in my written evidence, I have serious reservations about the proper occupier proposals. I understand the motivation for them and I acknowledge that they have been produced with good intentions, but my reservations are twofold. First, as Derek Flyn said, given that the problem has been well known for a long time, it seems strange—to put it mildly—that the bill, which has been in preparation for some time, should have fairly critical measures added to it at such a late stage in the process. That does not inspire in me great confidence that the people who were responsible for drawing up the bill thought through the issues thoroughly before they started. If they had, the proposals would have been central to the bill from day one and would not have been introduced late in the day, as they have been.

My second reservation echoes Iain Turnbull's point. I do not believe for a moment that the proposals will work. All previous attempts to introduce regulation of this kind have been conspicuous by their failure, because of the sheer complexity of the regulation that is always adduced. Over very many years, there has been a tendency when dealing with crofting legislatively to keep adding further layers of complexity, processes and procedures. The proposed amendment is another example of that tendency. It seems to me utterly implausible that what is proposed by way of regulation will be workable, if one considers the actuality on the ground. In current circumstances, it will be extraordinarily difficult to enforce that kind of regulation.

I suppose that all things in life are possible, and in future the commission may be an entirely different creature from the commission of the past but, as Iain Turnbull said, the commission's record in enforcing existing regulation is not good. The committee has heard that repeatedly from many sources. It is a bit of a leap of faith to ask us all to accept that the world will be entirely different from this point forward. I do not think that it will be. Throughout the process, I have argued that the intention of the Parliament and the committee should be to simplify crofting regulation, not to make it even more complicated.

Johnnie Mackenzie: Jim Hunter has said most of what I intended to say. We acknowledge that this is a well-intentioned move that aims to take some heat out of the market in crofts. However, we share the concern that the existing powers have not been used very much. We have a slight reservation about condemning the relative lack of use of existing powers by the commission in more isolated areas, especially the Western Isles, where young folk have to—or feel that they have to—go to Glasgow, Edinburgh or somewhere else far away to earn a living, but ultimately want to come back to take over a croft that has been in their family for a long time. We wonder about some of the enforcement action in such cases. However, the main point is that we share Jim Hunter's concern that the proposals seem very complicated. Under the provisions in the proposed amendment, it seems that the commission will have to jump through a large number of hoops before it can decide that someone is not a proper occupier. The process will be very bureaucratic.

We support the last point that Jim Hunter made. We are looking for simplification and do not see this as a simple mechanism.

Norman Leask: We need a bill that will stop the haemorrhaging of croft land and that will give the Crofters Commission back to the crofters or give them confidence in the commission. The proposed amendment seems to be a very complicated way of doing the former and has nothing much to do with the latter. I find it difficult to accept that it is the simplest way forward. However, we must get something in place during this session, so reluctantly we support the bill at stage 1, at least.

Donald Murdie: I speak as an owner-occupier crofter as well as an employee of the SCF. When I took over my croft 18 years ago, my solicitor told me sternly that if I ceased to be resident on or work the croft, I would in effect be the landlord of a vacant croft and the Crofters Commission would require me to install a tenant. Although that power is seldom used, it has always been there. We feel that what is proposed is a long-winded way of going about something fairly simple. The powers already exist, although we welcome the additional powers to challenge misuse and neglect by owner-occupiers, which are about the only new ones.

We need to have a far tighter definition of what constitutes purposeful use; I am thinking in particular of the concept of nature conservation being a purposeful use. That sounds a bit like a get-out clause for a variety of people, who could claim that they are neglecting the croft for the purposes of nature conservation. One of the worst habitats for wildlife is rank lodged grass, which I am afraid we see a lot of in crofting areas. If nature conservation is going to be considered a purposeful use, the crofter should either be a

participant in an agri-environment scheme or have an agreed management plan that reflects their conservation objectives.

I draw attention to the granting, by default, of occupier status to everyone who is currently an occupier, whatever their status, and their successors. It will take a long time to deal with people who have acquired that status without being entitled to it. We would like there to be proper qualification for that status, rather than it being granted by default. Like many other speakers, my concern is whether the Crofters Commission has the will and the resources to enforce the proposed legislation.

Iain Turnbull: We support what has been said about nature conservation. We said in our written submission and in oral evidence in Oban that there is a loophole that could be used as a means of avoiding regulation and that the use of land for nature conservation must be formalised.

There is a question about whether the commission will be able to regulate proper occupier status as well as the appropriate use of crofts. That goes beyond the commission to the Scottish Land Court, which is where the matter is likely to fall. We can give the commission the powers and resources to carry out such regulation, but we must consider the result of the process if decisions are appealed to the land court. As often as not, unless there is a clear definition of proper use, the land court and lawyers will debate the matter for a long time and will come up with as many holes as you can think of, so we are no further forward. Proper occupier status and the appropriate use of crofts must be capable of being regulated, regardless of whether it is the commission or someone else who does it. The process must be bullet-proof; otherwise we will not make progress.

10:00

The Convener: Okay. I wonder whether colleagues have anything to say on the in-principle issue of the proper occupier.

Mr Morrison: Some of the people around the table have mentioned the good intentions that underpin this substantial amendment. However, as legislators, we should not be about good intentions; we should be about taking good, competent, well-thought-out legislation through its due process and on to the statute book. The point was also well made by Professor Hunter that here we are, at this late stage, convening a meeting to discuss an 18-page amendment on an issue that has been well known for three or four decades. However, that is not an issue for us to debate today.

In the light of Norman Leask's representation, would it be possible to pass a crofting reform bill that would address some serious issues—issues on which there is consensus—without this 18-page, Johnny-come-lately amendment?

Simon Fraser: I note Jim Hunter's suggestion that there are so many difficulties with the bill that perhaps only two or three issues should survive. I would add about another 16 or 17 to that. There are many good aspects to the bill, which many of us have been arguing for over many years. We must not lose them. Whatever Parliament is minded to do, it is exceptionally important that we do not lose sight of that fact.

I am not certain whether the bill should be enacted. As I stated earlier, however, because we lack the ability to control the owned-croft sector, it is essential that, whatever form the bill takes, it should include a measure to deal with the owned sector. The bill must work, and I agree with Iain Turnbull that some of it could be readily unpicked if it went to the courts. Perhaps the simpler the bill is, the more bomb-proof it will be.

Mr Brocklebank: I back up what Alasdair Morrison and Simon Fraser have said. Derek Flynn said that the intention of the proper occupier proposal is "stunning in its simplicity". That sounds like almost a contradiction in terms, given the fact that many witnesses have told us that it seems just to add another layer of complexity to the bill. Having listened to a lot of evidence, I am of the mind that this may not be the bill that we seek. Yes, there are aspects of the bill that we can support; however, could those aspects not have been achieved either within the existing legislation or much more simply than through the bill? The bill seems to complicate matters in an already over-complicated morass of legislation.

Norman Leask said that we need a bill. Do we need a bill? And do we need a bill this side of an election? Should we not be trying to get the right bill—perhaps a more simplified bill—that would be far more robust, as Simon Fraser has suggested, rather than this hostage to fortune that is to be tested out once we get it? The current bill should fill us all, as legislators, with tremendous foreboding.

The Convener: I remind colleagues that the purpose of this session is not to discuss whether we should have a crofting reform bill. Both Alasdair Morrison and Ted Brocklebank have put that up in lights. Our real intention today is to get to the bottom of the concept of the proper occupier.

I will let Ted Brocklebank's questions on the proper occupier stand, but the wider issue is something for the committee to judge. A few of you have tentatively or strongly given us your

views on the bill as such. We are really trying to tease out whether the proper occupier proposal is needed, what it is meant to do and how it would work.

Derek Flynn: It is to only the small proportion of owner-occupied crofts that proper occupation applies and it is sorting out something that needs to be sorted out. Where a croft is tenanted, the landlord has powers—the whole system is based on landlords and tenants—and if landlords see dereliction of their crofts they can take steps to deal with it. We are not talking about derelict tenanted crofts, as has been mentioned this morning. We are talking about dealing with people who have been encouraged by Parliament to purchase their crofts and who have no rules to follow. Now we are giving them the rules. That means that someone who purchased their croft, but who no longer lives on or beside it, has to find out how they are going to produce the proper occupier, either by becoming the proper occupier themselves or by finding someone else. It means that some crofts will be made available.

Professor Hunter: I want to reiterate in a bit more detail the reason for my scepticism about the enforcement of the proper occupier provision. The explanatory notes that the Executive has provided go into considerable detail about how, in particular circumstances, the commission will notify so-called proper occupiers that they might no longer be proper occupiers, and there would then be a long process for removing them from the croft. To put it bluntly, I do not believe that that is an enforceable proposition in the real world. I find it very hard to understand. The commission gets into a lot of difficulty as it is with the rules and regulations about absentee tenancy. Even when absentees are far away and have not, in some cases, set foot on the place for decades, it is controversial and difficult.

To me, it is an unbelievable proposition that wider society will accept that somebody who invested money in purchasing a croft and who lives on the croft, but who is alleged to have made improper use of it, will have that croft taken away from him. I find that really difficult to envisage. It would require the commission to operate in a way in which it has never, in my experience, been inclined to operate before. Apart from all the other issues of principle, which go back to the issue of simplicity or the lack of it, I find it inconceivable that it could work. Perhaps the concept makes sense on paper and as a set of legal procedures, but I find it hard to believe that it would work in the real world.

John MacKintosh: I want to go behind the proper occupier a little bit. I think that the reason why you get dereliction of crofts is that there is a complete and utter lack of realistic support for

crofting and what crofting is about. Until we get that, you will find that the situation that Jim Hunter referred to will pertain, because fewer and fewer people will work those crofts. Are you saying that we have to be proper occupiers, even though we make a loss on the croft? If so, that is a highly significant statement to make. There are quite a few crofts that make a loss, so the crofter is left with one option, which is to start looking at the market and thinking of getting out. That is a sad state of affairs.

I am also just a little confused about the legislation, although I feel that I should support it. I am confused about whether someone who has not decrofted their house and garden ground will find themselves and their family out on the road—we do not have streets in the crofting communities yet, so I shall say out on the road—and therefore changed from being crofters to having some other status, whether they are called homeless or something else. That seems a very odd situation indeed, and we have to clarify whether we really mean loss of the agricultural part of the holding or the domestic part of the holding. Then there is the complication—in, I think, section 13 of the bill—which says that people such as me who came home and built a second house on the croft will find that that house is somehow considered not to be a croft house but is considered to be a part of the croft. If my parents had not worked the croft and if I was not in a position to work it, I could have been out of my house, too. Such complications seem to be creeping in. However, if there was good support for crofting, then people would actually work their crofts and the number of such cases arising would be minimised.

The Convener: I call David Green.

David Green: Thank you, chairman.

The Convener: Convener.

David Green: Sorry?

The Convener: It is “convener”—I say that just in case “chairman” becomes a trend.

David Green: There is a lot of talk about the Crofters Commission not doing its job. I sometimes feel that I should bring my dog with me on such occasions, so that I have a friend. Speaking for the present board, there is political will. We have met every target that we have been given and that has been agreed with Scottish Executive Environment and Rural Affairs Department.

We have been discussing dealing with absentees, but each absentee is different from every other absentee. We recently had a case in the Western Isles in which it seemed fairly clear-cut that we were going to take action. We arranged a hearing and, when we got there, the

whole community turned out. They asked us not to take action on the absentee in question, who was valued in the community, visited it regularly and so on. It is difficult to address such situations through regulation.

Keeping to the subject of proper occupiers, there are approximately 3,700 owner-occupiers out of 17,700 crofters. We can assume that absentees number approximately 10 per cent. There is a real possibility of taking action with the new, clarified rules. The concept is quite simple, and it could free up some crofts where that is possible. However, people have to understand and sign up to the rules before action can be taken. There is potential to encourage more active use of crofts. That is a big challenge. A lot of young people want to get into crofting and if some legal mechanism could be used to give us more power to allow that it would at least be worth considering.

Norman Leask: We need to stop the haemorrhaging of croft land. The Executive and the lawyers say that the proposals can achieve that. I must bow to their greater knowledge, although it seems a complicated way of getting there. I agree, however, that we do need something. As somebody said earlier, there are many good things in the bill, other than the two things that I would like.

We know that the perception of the Crofters Commission is not necessarily the same as what it does. It is possibly the commission's job to improve that perception, which is currently poor.

Rob Gibson: We cannot start a discussion at this stage in the life of crofting by saying that we will add another complexity to the existing complexity—and then say stop. Unfortunately, Government has to dictate that, and we have not had a Government that has dictated that. We are in the middle of trying to create something workable out of the proposals before us—picking out the bits that might do something positive and rejecting the rest. If we are discussing proper occupiers, and if residence and commitment are the principles towards which we should be working, as Derek Flyn said, there must be regulation and support from the organisations that have been set up to help crofting to develop. If that is the case, and if owner-occupiers and tenants might both be liable to neglect things or be absent, we will be dealing with a problem that is not restricted to how owner-occupiers deal with the land that they have.

We know that neglect happens under many tenants, and there are far more of them. Absenteeism is rife, at about 10 per cent. If that is so, is it not better simply to redefine “crofter” than to create two separate forms of organisation for tenant crofters and owner-occupier crofters, and to take the 1993 definition of a tenanted crofter and

make that definition include owner-occupiers, thus recognising that both owner-occupancy and tenancy are part of the crofting scene? Would that not simplify the definition, which could be tested against the regulations that we know must be stepped up?

10:15

Norman Leask: I agree completely that crofters should be crofters, whoever owns the land. The ownership of the land should not be important, whether it belongs to the crofter, a family friend, an estate or the Government. Crofters would have some advantages from owning the land because they would not bring the problems on themselves that a landlord might, but that is not what we are talking about. We are trying to save the bill because we need a bill for the future. In the past, the legislation should have stated that a crofter is a crofter regardless of ownership and, in future, it must go in that direction.

John MacKintosh: That is where we came from in 1998. We started off by saying that a crofter is a crofter and that we would find a definition that embraces all crofters.

Professor Hunter: Norman Leask talked about the poor perception of the Crofters Commission. In my written submission, I say that that is a fundamental issue. It is a fundamental issue for the concept of a proper occupier, but it goes way beyond that.

The hearings that the committee has conducted have rather changed my mind about the bill in general—I appreciate that the committee does not want to talk about that—because it has emerged with stark clarity that many of the witnesses have no great level of trust in the Crofters Commission as a regulator. You have heard the same thing today from the representatives of the SCF. I believe strongly that it is a mistake to proceed without addressing that fundamental question. Some mechanism must be found to re-establish trust between the regulator and the people who are being regulated because, without a measure of respect on both sides—mutual respect for the processes and a conviction out on the ground that they are being carried out fairly and adequately—the system will simply not work. That is a fundamental issue. Where the mistrust has come from and whether it is altogether fair are different questions, but there is indubitably a very low level of trust in the commission as a regulator among crofters in general. Somehow or other, we must find a way forward through that.

Since my evidence to the committee that large chunks of the bill should simply be ditched, a number of people—from the Executive and elsewhere—have repeatedly suggested to me that

we must proceed with the bill because, if we do not, there will be no chance to revisit the issue for quite some time. Although the bill may have all sorts of defects, it is said to be better than no bill at all. You have heard the same argument today. I regard that argument as unacceptable, considering what the Parliament's role should be in legislation. It is not acceptable for the Executive or any other body to proceed with a bill that would fundamentally alter crofting and how we administer it on the basis that, although it might be a bit of a hash, it is the only thing that we have and it is a hell of a lot better than nothing. That is a deplorable argument for serious people to advance. That is why, on the back of the evidence that the committee has heard, I feel strongly that the solution is to proceed with the measures on which there is some consensus, whether there are three or 17 of them, and to try to re-establish a degree of trust between those who are being regulated and the regulator. Unless we can do that, we are all wasting our time.

Johnnie Mackenzie: John MacKintosh has almost made the point. If I understood him rightly, Mr Gibson suggested that it would be a good thing if all crofters, whether tenants or owner-occupiers, were subject to the same regulations. We have said the same thing for a long time; having different classes of crofter makes for awkwardness.

Earlier, John MacKintosh mentioned the 1988 crofting legislation reform group. I was part of that and I want to quote one sentence from it:

"All crofters should be subject to common statutory 'conditions of occupancy' ... These conditions would relate essentially to the occupancy and use of the croft. If any crofter did not comply ... he could be subject to removal".

That is the principle that we are talking about; it was made absolutely clear in 1988.

Richard Lochhead: If John MacKintosh, a respected crofter of many years' standing, is confused by the bill, perhaps the witnesses will have some sympathy with the members of the committee who have had to deal with the bill during the past few weeks. I hoped that the Scottish Parliament was going to simplify and modernise legislation, but the bill is a complex quagmire and I am finding it very difficult to wade through it.

Of all the bills that I have come across in committee, I cannot remember one where the witnesses have been so divided as the crofters are. That there are such differences of opinion in one particular sector of the community makes everything very difficult for the committee.

The fact that an eight-page amendment has been introduced at such a late stage illustrates the problem with the bill. Before the bill was

introduced, there was no proper debate about the future of crofting, its role in the 21st century and the definition of a crofter. The committee is therefore trying to deal with the bill without that debate having taken place. It appears that the bill was generated behind the scenes, perhaps by civil servants or some of the people on the Crofters Commission, and the committee is left to deal with it in its present form. Do you think that the amendment illustrates that there was no proper debate on the role of crofting and crofters in the 21st century before the bill was introduced? Should we have that debate before we legislate?

John MacKintosh: Absolutely. I do not see how you can legislate for a sector if you do not know what the sector's objective is. That is the big gaping hole in the system.

One possible way forward is to proceed with the elements of the bill that are still attractive, but the Parliament should make a commitment that the debate will not cease, which is what happened after 1976, when the shutters came down and there was an end to the debate on crofting. The same thing happened in 1961 when the Westminster Parliament stopped at 12 o'clock one night or something like that, and that was the end of the debate on crofting.

Crofting affects 40,000 people's lives, as well as the lives of other people outside crofting who supply services. Crofting is important to the maintenance of the road structure; there are issues for domestic transport and the transport of goods and services. All those things are there because we have helped to maintain the infrastructure, but there is no debate. The agricultural strategy document is about large-scale farming and not about crofting. It is all about the big issues and globalisation.

If all those things were put down on paper, we could pull our way through them and act. We could define a crofter accordingly. However, we are trying to base a new act on an act from 1886, when the people were, as historians tell us, almost starving to death through living on a monodiet of potatoes. We are not at that stage, but we have to have opportunities. Many of us who occupy crofts are professional people and we want to stay in the Highlands. We want our sons and daughters to stay in the Highlands. The debate has not taken place.

We are therefore left wondering who and what a crofter is, and there is no concern at all either in the proper occupier amendment or the rest of the bill about the welfare and well-being of crofters.

The Convener: We are really here to consider whether the proper occupier proposal helps those issues or not. However, I am happy to be indulgent and to allow us to roam around issues of principle.

Richard Lochhead: That is fundamental.

The Convener: It may be fundamental, but in the next half-hour we need to get on to the detail, as well as the principle. We have done less of that.

Richard Lochhead: I am not sure what the problem is.

The Convener: With respect, we have been discussing the bill for weeks. This is not our first discussion of crofting. I want to ensure that we not only discuss matters of principle but get to the nub of the issue.

Professor Hunter: My answer to Richard Lochhead's question is yes. There has not been the debate to which he refers. I appreciate that this is a general point, but the particularly tragic aspect of the current situation with regard to crofting is that, in the absence of a wider debate and, as John MacKintosh indicated, any positive thinking in the department about crofting, we are missing the fact that, in principle, the prospects for crofting in Scotland have never been better, given current rural policy objectives and the way in which we now think in Scotland, the United Kingdom and beyond about the countryside and rural development. Today, the case for crofting can be made far more strongly and effectively in relation to wider policy objectives than was ever possible before. Somehow that has escaped the people who were responsible for drafting the bill. They appear to continue to think—as they have thought traditionally over many decades—that crofting is an anomalous and rather curious type of landholding in a corner of Scotland that, for better or worse, has been protected by legislation and must therefore be dealt with, but not as a serious policy issue. That is a really bad mistake.

The good thing about what has happened in the past few months is that we are beginning to have the wider debate that is needed. As Mr Lochhead indicated, it is late in the day and we need to draw breath to engage with the interests that are represented here and with others. That is possible, in principle, and would enable us to get some kind of agreed strategy for the way forward. At the moment, there is no general agreement about the bill and, in particular, about the regulatory structures with which it deals. Until that issue is resolved, the proper course of action is to draw back. Some elements of the bill should be progressed, if possible, but we should pause for breath on the regulatory structure and the basics of how we take crofting forward. As John MacKintosh stressed, crofters and others should not accept that sort of solution unless it is accompanied by a cast-iron guarantee that the Executive and, ideally, other political parties that are represented in the Parliament will undertake to revisit the issue as a matter of extreme urgency and to put in place measures to enable the sort of

debate for which John MacKintosh and others have called to take place. That is an important rider.

Nora Radcliffe: I do not come from the crofting counties and I do not represent a crofting area, but it seems to me that having set our hand to the plough it would be a mistake for us to stop. There has been considerable discussion of crofting over many years; everyone around the table has referred to 30 years of discussion. Having embarked on the bill, we have a duty to take it forward and to tap into that previous discussion. That is what we are trying to do. I make those comments by the by.

I have a question for Jim Hunter. In your submission, you say that people missed a trick in 1955 when they failed to go back to first principles and

“define a crofter as a person whose main home is on his or her croft”.

From Rob Gibson's comments, it is clear that he comes at the issue from the same place as me. Would the introduction of such a definition provide a simple and effective way of bringing under regulation people who are currently unregulated?

10:30

Professor Hunter: My view is the somewhat absolutist one that we desperately need to return to a simpler way of dealing with matters. Instead of responding to each difficulty that arises by adding further layers of incredibly complicated procedure, we need to go back to first principles. If we return to the proposition that a crofter is, by definition, somebody who lives on his or her croft, all the complexity will disappear. Having said that, we are where we are and the proper occupier proposal comes from a reasonable, laudable and understandable intention on the part of the people who drew it up. In effect, they do not want to be nasty to anyone.

A few moments ago, David Green talked about a hearing regarding an absentee case in the islands, in which the community said, “Okay, the person is an absentee, but for a variety of reasons we don't think you should do anything about it.” That is an example of the difficulty that we have got ourselves into, and it has all sorts of repercussions; it is not an effective basis on which to go forward. We need to be much more stringent, particularly when so many crofts appear to be going into a state of dereliction while, at the same time, there is so much demand for crofts. In the past, it did not matter if somebody was an absentee because nobody wanted their croft anyway, but it matters now.

We need to think much more seriously about what we are trying to achieve. I will cause some

offence to my crofting colleagues by saying this, but crofters cannot have it both ways. For example, Johnnie Mackenzie owns a lot of croft land, but for well over 100 years he and his predecessors have been unable to extract any worthwhile value from it, and for very good reasons. They have had to accept that, for the wider community benefit, Parliament and legislators have argued that crofting landlords should have their rents reduced to a minimal and nominal level—today, they have reduced to a level at which it is not worth while collecting them. I bet that it costs Johnnie more to collect his rents than they are worth.

Crofters want all the benefits of that. They want Johnnie Mackenzie and other landlords to be regulated and to derive no real economic benefit from crofts, but some crofters tell me, “You can’t do anything to us that will in any way inhibit our right to sell our tenancy for as high a price as the market will pay for it.” To me, the answer to that is brutally simple: if you will not accept regulation, why should you continue to claim the benefit of a regulated system?

The matter is extremely complicated and I tried to set it out on paper, but I find it hard to understand why we are being asked not to interfere with a free market in croft tenancies and crofts inside a regulated system that is predicated on the notion of fencing out the market forces that would have enabled Johnnie Mackenzie and his colleagues to extract the value that has been denied to them by the system. To me, that is a set of illogical absurdities.

We should do what John MacKintosh suggested: stop mucking about with amendments to legislation that goes all the way back to 1886 and proceed on the basis of thinking fundamentally about what crofting has to offer today. Therefore, I disagree with Nora Radcliffe: I do not think that the bill should proceed in its entirety just because it is before us and has been discussed. Many people have found it wanting; that has been the burden of much of the evidence to the committee. Given that, it is perfectly sensible to draw breath, stop and think again.

Derek Flynn: There has been no shortage of debate about crofting, so to suggest that we should debate everything again is nonsense. My experience is that there is no consensus on the goals of crofting. When the Crofters Commission pursued the purchase provisions, it saw landlords as redundant. However, crofters argued that landlords should be left in the system. Landlords are not missing today; what is missing is landlords’ activity in the system. If landlords see things going wrong on their estates and land, they can act, as they have the original powers as set out in legislation. Elsewhere, the bill provides for opinion

in the locality and the possibility of involving the community in decisions. Landlordship is moving towards community landlords.

None of that has anything to do with the proper occupier provisions. We are talking about crofters who have purchased their land. They should maintain occupancy and control of that land and they should not be allowed to leave it to live elsewhere and think that they have an easily marketed asset. We look for a solution to a problem that has been around for a long time.

Today, we are talking about proper occupancy of crofts, which I think everyone supports. One goal of crofting is that people who are entitled to have crofts—whether in tenancy or in occupancy—should live on or beside their crofts. That is all that the proposals are about. Other things that people may have to do with their crofts are for debate elsewhere. As John MacKintosh said, people are being asked to do unprofitable things on their land. However, that is not the main problem—the main problem is that some people do not responsibly occupy their crofts.

Donald Murdie: The question is whether the proper occupier concept can solve the problem that we all agree exists. Our view is that it does something simple in a lengthy and complicated way, but if it achieves the aim that is fair enough—how it is achieved does not really matter.

The crux of the matter is the regulatory body’s will and ability to deliver. The chairman of the Crofters Commission said that it tried to take absentee action in Lewis but the community said that it did not want anything to be done. I would like to know the details of that case.

We know of townships with 70 per cent absenteeism, including so-called absent owner-occupiers. That term is a misnomer, of course, because there should be no such thing as an absent owner-occupier. If the owner is absent, the owner is a landlord and action should be taken. Powers exist to do that now.

In areas with an enormous level of absenteeism that is paralleled by a huge demand for crofts, we must ask whether we can have faith that the situation will be reversed. Where are the staff and the motivation in the commission? The commission’s staff are demoralised.

The Convener: David Green is next. Over the past few weeks, the Crofters Commission has been criticised for not doing enough on absenteeism and neglect. If the commission is also to be given responsibility for enforcing the proper occupier provisions, how will it manage to prioritise its resources?

David Green: I should clarify that the example that I gave was just one case. Last year, we took

action in 165 cases of absenteeism. We are required to be sympathetic but firm. The point of using that example was to show that it is a difficult task but someone needs to do it, and we are happy, or content, to do it.

Having been in many debates over the years on whether to defer reform, I know that deferral sometimes seems to be the easiest option, because proceeding seems to be too complicated. However, if we do not proceed with the bill—others have talked about this, so I want to deal with the point briefly—we will not benefit from the bill's many good proposals, such as local policies for local areas. In our discussions with the assessors over the past three to four months, they all said that they want the concept of local policies—

The Convener: Let me just say that we already have that evidence, which we will need to sift through.

The last few comments have been about whether the Crofters Commission has the ability to implement and enforce the proper occupier proposal, given the range of other duties that have been thrown up over the past few weeks. What is the commission's view on priorities and resources?

David Green: It has been claimed that we will not have the resources to implement the proposals. Clearly, any extra responsibilities that are given to an organisation have the potential to cost resources, but by streamlining regulation the bill should free up resources that can then be used to enforce the proper occupier proposal and to address neglect. In addition, with local policies it should be possible to consider how, in a whole area such as Shetland, we can address neglect, misuse, absenteeism, lack of cultivation and all the other issues taken together. In that way, it should be possible to achieve some economies of scale. The bill's provisions to tackle neglect, deal with rogue shareholders in common grazings and deal with proper occupiers all have potential resource implications, but the issues need to be addressed and clarified. The bill will certainly make a difference in the crofting counties by providing a package of measures, of which the proper occupier proposal is just one.

The Convener: I see that quite a few people want to speak, but several colleagues have not asked any questions yet and I want to move the discussion on.

Eleanor Scott: I have a short and specific question—at least, I think that it will be short—for Professor Hunter. He has reservations about the proper occupier proposal as there is dubiety over whether it could be enforced. He spoke about the principle that, if people invest in buying a piece of

land, such enforcement might not be societally acceptable. Do you think that it should be enforced?

Professor Hunter: Well, as the Irishman said when he was asked for directions, I would not start from here. I have been asked whether the proper occupier proposal should be enforced, but I would not go down that road at all.

Eleanor Scott: Should owner-occupier crofters be regulated with the same stringency as other crofters?

Professor Hunter: Yes, they should be regulated. However, all experience of regulating crofting suggests to me that the proper occupier proposal will not work any better than the many other complicated sets of regulatory powers that the Crofters Commission has.

There is a view that David Green—who, incidentally, I think has a most unenviable job—needs more resources if his commission is to make the whole thing work better and make regulation more effective. I am not persuaded of that. For what is a relatively small number of crofts and a relatively small number of crofters, the commission already has a quite extraordinary amount of financial and manpower resources. Given that the commission has not been able to regulate crofting effectively up to now with those resources, I am not persuaded that it will be able to regulate crofting any better in future.

Let me explain my point about societal pressure. One of the fundamental difficulties of this endlessly complicated and convoluted process is that the Crofters Commission comes under a set of conflicting societal pressures when it gets into the judgment of Solomon situation that David Green described in relation to absentee cases. If one wants to regulate effectively, one has to establish consensus on the desired objectives at the outset, then create a simple, straightforward method for regulation and allow it to happen.

The original point of the bill was to define simply who is a crofter. If someone did not fall within the scope of that definition, they would cease to be a crofter. My constant appeal for simplicity is that we revert to something of the sort that I described, but the amendment on the proper occupier proposal proceeds in precisely the opposite direction.

10:45

The Convener: Jim Hunter has issued a challenge—is it possible to deal with the matter more simply?

Simon Fraser: I do not think that it is possible to deal with it much more simply than at present. A set of regulatory provisions is being introduced and the Executive has to make its savings and

give its explanations. I would have no difficulty with working through eight pages of the amendment on the proper occupier proposal—probably because I am a lawyer—if eight pages were required to cover it.

The Convener: Perhaps you are the wrong person to ask.

Simon Fraser: Ten pages would have been too many.

I will attempt to answer an earlier question about the detail of the proposals—perhaps it is not only politicians who do not always answer the question they are asked. As I answer, I will pick up the point about the extent of the Crofters Commission's regulation to date.

One of my jobs is crofting administrator, for want of a better term, for a number of estates—there are well in excess of 1,000 crofts on the books. I have seen the Crofters Commission's attempts to enforce the absentee provisions on many occasions, and I admit that they are bearing fruit. A considerable number of absentee tenancies have been terminated and many other people have been induced to pass on their croft within the family or otherwise. Regrettably, a number of people have taken the route of purchasing their croft to avoid absentee action being taken against them, despite me saying to them, "Look, you realise that you will just become the landlord of a vacant croft and the commission can put in a tenant over your head if you do that?" I am not sure that that will happen, but if the proper occupier provisions are enforced they will ensure that it does not happen.

I will try to answer briefly the question about whether we can deal with some of the detail in the amendment. I think that it was suggested at the committee's meeting in Stornoway that there is a problem, because proposed assignees can present a programme of works for the next five years but there is no way of checking up on them to see whether they carry them out. I hesitate to suggest that we add more to the eight pages of the amendment, but there is provision in it to enable a person to lose their proper occupier status. That affords an opportunity to include a mechanism to require—if the commission chose to do so—somebody who seeks to be or to remain a proper occupier to produce a plan for how they intend to put the croft to good use over the next three to five years, and the commission could revisit the case. There is no reason why we should not do the same for new assignees. If a proper occupier can lose his status, and if we are to treat everyone the same, we ought to have the same provision for new assignees. We could include such a measure, but there are a couple of riders. The first is, of course, that it would have to be regulated, and the commission would have to be

prepared to police it as rigorously as it does absentee tenants. Secondly, if the Executive, through the bill, wants people to put crofts to purposeful use, it must be prepared to fund that purposeful use. Others have touched on that issue today.

All the difficulties that are perceived within crofting are due not to the presence or absence of regulation but to many outside causes. I am sure that Johnnie Mackenzie has noticed that the price of his lambs has not increased over the past 25 years. He will also have noticed that the maximum price that he gets for a kilo of wool has gone down. The situation is similar for beef on the hoof. In addition, the headage payment has gone and people neither like nor understand the single farm payment scheme. The reality is that there is no connection between the scheme and agricultural activity. The new agri-environment schemes are impossible—or almost impossible—to access. If someone manages to make an application, it is likely that it will be refused several times before they get anywhere. Most people just do not get anywhere. All of a sudden, under the new crofting counties agricultural grants scheme, people cannot get a CCAGS grant to replace a rusty fence with a new one.

All those things are going on; it is not just a matter of legislation, or the lack of it. That said, the Executive has to recognise the issue at stake in its proposal. I return to the point that I made earlier: if the Executive insists that people must put the land to purposeful use, it must be prepared to fund that purposeful use, or at least support the funding of it.

Iain Turnbull: I fully support that. We have to be very careful that we do not create a complete mess with legislation; we could get to the stage that people do not want to be crofters any more. At the moment, there is a perceived demand for crofts. There are various reasons for that, although I suspect that the main reason is to get sites for houses. As Johnnie Mackenzie suggested, if we legislate to the extent that people are forced to do stuff that makes them a loss, and no funding is made available, people will not want to be crofters.

The question is: what do we want crofting to deliver? We have asked the question before; indeed, it has been asked today already. We are running around trying to find solutions to problems that we have not clearly identified. As others have said, there is no vision in the bill, which makes it impossible to say whether it will achieve what the Executive wants it to achieve, although it has not really said what it wants to achieve. How, then, could the effect of the bill be measured? It seems mad that we should be trying to solve problems without clearly identifying what is causing them. For example, the explanatory notes state that the

holiday letting of second homes or homes on crofts would not contravene the proper occupier use, yet holiday homes are one of the biggest issues facing the Highlands and Islands. Where on earth is that proposal coming from? Surely it would be better to address things in a different way. We have identified that specific problem with the proposal.

There seems to be a complete lack of joined-up thinking on the bill, which in many cases beggars belief. The consultation process has been going on for the past few months: various committees, sub-committees and groups were discussing the issues even before the white paper was produced. Having gone through several years of discussion, how on earth have we got to the point where no one is happy with the bill? It seems like madness to me. I have not come up with any answers, but it defies logic.

The Convener: We note your point on holiday homes. That is part of our consideration of the proper occupier proposal.

Elaine Smith: I have a couple of points on the amendment. First, the Executive talks about terminating the proper occupier status if the proper occupier

"Has control of more than 4 crofts".

I seek the panel's comments on that.

My second point is on the dampening of the market. The question that has to be put to all the panel before they leave the room is: if the bill goes ahead, should the amendment be in or out? Would the bill be the better or worse for it? The Executive talks about the right to buy being

"an essential feature of the relationship between the crofter and landlord. It provides the croft tenant with a sanction that can be applied to an oppressive or obstructive landlord"

and goes on to say:

"Controlling the price paid for croft tenancies or crofts which have been purchased by the former tenant is impossible."

I would like comments on those statements on the pressure for change. Why are we bringing in the proper occupier proposal? The Executive talks about price controls not working and states that the proposal is supposed to make croft ownership less attractive to those who do not intend to use the land properly. Will that be the case? Will the proposal dampen down the market in some way, as I think Mr Fraser suggested earlier, and will it help to repopulate areas?

I also have a specific question for David Green, who said that better regulation could free up the workforce. However, there has been talk of more aggressive use of the existing powers. If that is to happen, I am not sure how anybody will be freed up.

The Convener: There were a few questions there. Let us start by pinning down the issue of the maximum number of crofts. We are aware that crofts differ in size throughout Scotland and that there are different ways of managing them in different communities. Is the principle of controlling a maximum of four crofts right? Can we have brief comments on that, as I am conscious that time is beginning to run out? We will then consider the issue of dampening the market.

Norman Leask: For 50 years, we have been encouraged to amalgamate crofts, so we cannot at one stroke stop them being passed on to the next generation without support of some kind, although I do not know how that can be done. People in Shetland do not buy crofts to sell on, but there are many owner-occupiers there. The proposal would be a specific problem in Shetland and possibly Tiree.

Donald Murdie: The issue of the number of crofts that can be held by one individual depends on whether the crofts are put to good use and are worked properly. Crofts are sometimes acquired speculatively, often by spurious family assignment, and then not put to use but held as speculative property. Again, it comes down to regulation.

John MacKintosh: The issue raises a question that I have not thought about before. If someone has five crofts and one of them is not being put to good use, will the commission be asked to deal with that specific croft and leave the person with the other four? There is another way round the problem: rather than specify a maximum number of crofts in the bill we could allow ministers to decide from time to time what the limit should be. As I have said, the new legislation will bed in in the courts and in lawyers' offices during the coming four or five years. It will not really become properly active until about 10 years from now, by which time circumstances may well have changed. My suggestion sounds like ducking the issue, but it would enable measures to concur with the ideas on crofting at the time.

I believe in the general principle that we should not allow people to gather crofts. One of the benefits of crofting is that it encourages people to stay in a locality. Crofting areas have larger populations than places where crofts have been amalgamated into large farms in the past 100 or so years.

11:00

Professor Hunter: As Iain Turnbull said, the answer to the question depends on what our objectives are. As John MacKintosh just said, the issue depends on what we think crofting is supposed to deliver in wider socioeconomic terms. The past encouragement to amalgamate crofts

and make larger units that Norman Leask mentioned was driven by the policy that the future for crofting lay in creating viable agricultural units. However, even if we amalgamated entire townships now, we would not create viable agricultural units.

The real benefit of crofting has always been that it makes for much more densely populated rural communities than would otherwise exist. That is its overwhelming strength and it is absolutely basic to how it should be regarded today, because wider policy for the countryside is designed to deliver such communities with people in a diversity of occupations. Crofting delivers that magnificently, and always has done.

However, crofting does not create a hugely efficient farming structure—that is not the point of it. If we had wanted to create such a structure in crofting areas, we would have got rid of crofting in its entirety long ago and created large farms, but that was not done. From that point of view, we should minimise rigorously the number of crofts that are under the control of any one person and be far more ferocious than the commission has been so far—and than the legislation has allowed it to be—with regard to absenteeism.

The Convener: We have teased out a bit of support. What are people's views on Elaine Smith's question about dampening the market in crofts?

Iain Turnbull: That will depend on how effectively crofting is regulated. Effective regulation will dampen the market to some extent; it will reduce the level of interest in crofts because only people who are going to work a croft will be able to acquire one. Probably fewer people would work a croft than would not. That said, there is not a great deal of evidence that that will work. We could end up with a situation in which the opposite happened.

Elaine Smith: My question was whether the proper occupier proposals should be in the bill. Will they make the situation better or worse?

Iain Turnbull: I would prefer the proper occupier proposals to be in the bill, because there is a need for regulation of the owner-occupier sector. The paper to which Elaine Smith alluded says that the right to buy is essential and untouchable. Why? There is no justification for that statement. A decision was made in the 1970s that the right to buy was a good idea in certain circumstances, but those circumstances do not necessarily apply today. We are talking about this because of the decision that was made then. If a different decision had been made, we would not be talking about it. I do not think that the right to buy is necessary; in fact it is the root of the problem in the market in crofting. If one cannot buy a croft, it has little

value; its value lies in use of the land. One of the bill's main failings is that it completely avoids that issue.

Donald Murdie: It all comes down to how provisions are enforced and to the definitions of "purposeful use" and a variety of other terms that are vaguely defined at the moment. Over the past few weeks, the committee has been made well aware of the Taynuilt fiasco. Such events could still take place unless there is a redefinition of "purposeful use". The Taynuilt fiasco took place despite there being ample powers for the commission to prevent it. I would like to know how many absent owner-occupiers were dealt with prior to the Taynuilt fiasco and how many have been dealt with since. While there is still scope for such things to take place, the market will not dampen.

Simon Fraser: I will answer Elaine Smith's questions. Yes, the bill would certainly be better with the proper occupier proposal. It will dampen the market if the regulations are applied as we all hope they will be.

The magic number of four crofts seems to be purely arbitrary, although it is qualified in that the draft amendment mentions "at least four". There is no reason why it should not be "at least one other croft." That would give the Crofters Commission some discretion. I do not see why the number should be anything other than one. If it is four, the assumption will be that a person can have four. If it were "at least one other" that would let the commission consider whether, for example, having three small crofts is not as bad as having two big ones.

Johnnie Mackenzie: The proper occupier proposal will dampen the market. If conditions are put on any property, it will pull the market back. Pure speculation, as it is called, in croft land will probably tend to be dissipated.

The proposal would also mean that when people get a croft they will have an obligation to work it. An important issue is what valuers would do when it came to inheritance tax and all the rest of it. I am not clear whether a croft would still have the potential to go for development and so on. More important, people have said that the 1976 act was designed to get away from bad landlords. That was perhaps one of its intentions, but another intention was that a person could offer part of the croft—"part of the croft" was promoted as being the issue at the time by the Crofters Commission—for collateral. If the market were over-dampened, that would endanger such activities because a fair bit of capital is required to work some crofts, particularly for diversification into more labour-intensive activities. I hope that such activities would also come within the scope of the proper occupier proposals.

The Convener: Elaine Smith asked David Green some specific questions.

David Green: Before I answer the questions, I will address dampening of the market. The system needs to be regulated properly. The proper occupier proposal will dampen the market because if a person is not living and working on their croft the Crofters Commission can impose a tenant and the tenant can have the right to buy. That must be a disincentive, which will dampen the market.

A balance must be struck on resources. The bill includes provision for streamlined regulation, which should require less resource from the Crofters Commission. Local policies also offer the potential to adopt better working practices, which can lead to fewer resources being used to achieve the desired outcomes.

The power to tackle neglect is also in the bill. As has been outlined, neglect has for a variety of reasons not previously been tackled properly by landlords, but the power has potential resource implications. Tackling rogue shareholders and common grazings also has potential resource implications. Depending on how effectively they are addressed, the proper occupier proposal and the provision on the number of crofts also have potential resource implications.

Professor Hunter: I have said before and I will say again that I do not think that the proper occupier proposal will be enforceable. The policy climate nationally and in Europe is to take land—often very good agricultural land—out of production. I cannot believe for a moment that it will be acceptable to the wider community of this country and beyond that somebody will be kicked off, as it were, 5 acres of crappy land in Lewis on the basis that they are not making effective use of it, at a time when the thrust of policy is to take infinitely better land elsewhere out of production. For that reason the proposal will founder, even if the Crofters Commission endeavours to enforce it. The commission's record suggests that it is not an effective regulatory agency. Until that is addressed and until—as Norman Leask has said—crofters have confidence that the commission is doing a job that they consent to and agree with, none of the proposals will work. That is why I think that we have to come back to fundamentals and get a much higher level of agreement about what the thing is all about. I see no evidence in the bill that that has been done.

I do not accept the premise of the question as to whether, if the bill goes ahead in its entirety as drafted, the proper occupier provision will make things better or worse. The bill should not go ahead as it is currently drafted.

Johnnie Mackenzie: In response to Ms Smith's specific question, I think that the proper occupier proposals are better in than out. They are not ideal, but they should help.

A thought struck me in relation to something that David Green said. Elsewhere in the bill, there is the possibility to apply rules differently in different geographical areas. I wonder whether that might give rise to problems with the enforcement of the proper occupier provisions. My neck of the woods is a very agreeable place to live—there are nice beaches, there is a good medical service and it is an hour and a half from Inverness airport. It is a very nice place to retire to and to buy a holiday home in. Therefore, the demand for crofts is spectacular in terms of money. That is very different from the situation on the Isle of Lewis and many other places, and I suspect that the difficulties of enforcement could become quite considerable.

In one case, a croft was bought by a conventional—if you will forgive the word—croft tenant, an indigenous citizen. That was about 10 years ago, and I think that it was bought for £120, or 15 times the annual rent. About five years ago, the croft was sold to a pop singer for £200,000. He has a lovely croft by the sea with 5 or 6 acres of quite good ground, where he goes and makes music. I would have thought that he would be something of a target for the proper occupier provisions. The Crofters Commission's current difficulties in enforcing the regulations could become rather worse. It is worth thinking about whether such instances might be subject to the geographical horses-for-courses type of considerations.

The Convener: One committee member has not asked a question.

Maureen Macmillan: It is difficult to think of something new to ask.

The Convener: You do not have to.

Maureen Macmillan: I will, in fact. I wish to pick up on what Jim Hunter said about whether it is realistic to expect the Crofters Commission to regulate for proper occupiers and to use the regulations. Various conditions have been set down for proper occupiers—we have, for example, spoken about the numbers of crofts and limits on that. I am aware of the particular circumstances in Shetland and Tiree. Perhaps we should have flexibility regarding not just whether there is a demand for crofts but whether the local situation dictates that people in particular places need to have several crofts before they can make a living. I am thinking of Tiree, where there would be more depopulation if people were not able to have a few crofts.

I want to ask about other aspects of the conditions, for example the distance between home and croft. In Shetland, there are particular issues with people living in Lerwick and having a croft that is distant from the town, perhaps outwith the specified number of kilometres. Could there be flexibility in that?

We have also spoken about holiday lets. The committee has asked whether we ought to consider short assured tenancies for extra houses on crofts. Could that be included under the proper occupier provisions? That would also have to come under the conditions for assignees. There are various conditions to be enforced. Are they the right conditions?

The Convener: Is 16km the appropriate distance?

Professor Hunter: That is a classic example of where we get to by making more complicated matters that ought in principle to be straightforward. That distance is entirely arbitrary, like four being the number of crofts that people may have. I could write several figures on pieces of paper, chuck them in the air and go with whatever one I happen to catch. The provision does not seem to make an awful lot of sense, whether the distance is 16km, 30km, 40km or 80km. That is a good example of the very arbitrary nature of the regulation that we have arrived at using the processes that have been engaged in. As I keep saying, the original intention was simple and straightforward.

A crofter is a person who lives on a croft. If we begin to make exceptions on the number of crofts that a person can have or the distance that they live from the croft, we will get into a terribly complicated set of situations and we will create procedures that the commission will have to battle to make sense of. The approach has manifestly failed to deliver an effective crofting structure and I have no faith that anything will change if we add further complexity. I think that things will get worse.

Johnnie Mackenzie: Why put numbers in the bill? That is the question that you are trying to address. You can probably deal with the matter in a statutory instrument and have a debate on the specific issues. I know of a croft that was 25 miles from the person's home. It was well worked, but he was put out for being an absentee because the people around the croft said that he was an absentee.

11:15

Derek Flynn: Is such a person resident in the crofting community?

Johnnie Mackenzie: Yes. He had relatives in the community.

Derek Flynn: The bill allows for local opinion to be taken on board. That is an important part of the bill.

Simon Fraser: One example that has been mentioned is that someone can live in Stornoway but have a croft tenancy in South Lochs. The distance between the two is 10 miles or 16km as the crow flies. By road it is at least 25 miles, but one can get away with that.

The Convener: That seems to be a good point at which to end the session. I tried to keep the discussion on the proper occupier proposal, but I am conscious that it leads us into the bill as a whole. I thank all participants—members and witnesses—for remaining focused on the proper occupier proposal. It is tempting to broaden the discussion to include the whole bill. We realise that matters are interconnected.

I thank everybody not just for coming along this morning, but for being prepared to put pen to paper and to get to the heart of the issues, which we will now consider—not quite at our leisure, but during the next couple of weeks.

We will have a pause for two minutes while we let the current witnesses leave the table—they are allowed to stay in the room, obviously—and invite the minister and her officials to join us.

11:17

Meeting suspended.

11:27

On resuming—

The Convener: I welcome the minister, Rhona Brankin, and her officials, Shane Rankin and Ethel Burt. We come to our last public discussion on the Crofting Reform etc Bill. I understand that the minister does not want to make any opening remarks, so I will kick off with the first question.

We have had a series of discussions over the past few weeks, and we had a discussion on the bill in October last year. The proper occupier proposal came after the bill had been drafted and published. Why was that? What is the purpose of the proper occupier?

The Deputy Minister for Environment and Rural Development (Rhona Brankin): When I came to the bill, looked at some of the submissions and talked to people, I became aware that there were several concerns. The principal concern was that there was a market in crofts, which was perceived as having an adverse effect on the sustainability of rural communities. I convened several meetings—which I have told the committee about—in different parts of the crofting counties to get people's views. Concern about the

market in crofts and about the fact that the Crofters Commission was failing to act in specific cases came through loud and clear.

I then convened a group of people who discussed a range of issues but specifically the concern that had been expressed about the impact of a free market in crofts. That group came up with the suggestion that a proper occupier proposal should be developed, and that was done. The reference group came up with the proposal in November and it was in response to the request of that group—which was made up of crofters and crofting lawyers, some of whom have been represented here today—that Scottish Executive solicitors started work on the proper occupier, which was our response to the demand that we do something that would impact on the market in crofts.

The Convener: So the proposal was specifically to address the market in crofts.

Rhona Brankin: Yes.

11:30

Maureen Macmillan: But the proper occupier proposal deals only with the market in owner-occupied crofts. There is also a market in non-family assignments. Have you considered registration to restrict that market? It does not seem to be restricted.

Rhona Brankin: That did not come through in the consultation as being something that the crofting community was asking us to do. The proper occupier proposal was our response to a demand in relation to owner-occupiers.

Mr Morrison: I ask for brief clarification, further to Maureen Macmillan's question. How many absentee owner-occupiers are there out there?

Shane Rankin (Scottish Executive Environment and Rural Affairs Department): The figure is about 150, looking at lone tenancies as opposed to shared ones.

Mr Morrison: Why should they exist? Why is there even one? Owner-occupiers should have been dealt with under the 1976 act. One of our witnesses, Donald Murdie, said that when he bought his croft, 18 years ago, his lawyer rightly suggested—or said sternly—to him that if he was not present and living on his croft, the Crofters Commission would move in and impose a tenant on his vacant holding. Why are there 150 absentee owner-occupiers?

Rhona Brankin: Part of the problem is the fact that there has not been enough clarity around what should happen with owner-occupiers. As you know, owner-occupiers have been regarded as landlords of vacant crofts. I was told that we

needed to have clarity about the expectations on owner-occupiers and that that clarity did not exist. It is important to give the Crofters Commission that clarity and a clear framework for making decisions about what constitutes an owner-occupier. That requires a new set of criteria that the Crofters Commission can use to determine whether somebody is a proper occupier. We need clarity, focus and a framework for making decisions about whether an owner-occupier is living on and working a croft.

Mr Morrison: But we have that clarity already.

The Convener: I was just letting you in to ask for clarification, Alasdair. We go back to Maureen Macmillan.

Maureen Macmillan: The conditions of crofting tenure have not restricted the market in croft tenancies and the perception is that that is because the commission has not enforced them. People are wary of believing that the proper occupier proposal, which deals with owner-occupiers, will restrict the market. They feel that the commission will not enforce the conditions properly, because they perceive that it has not done so for tenancies in the past.

Rhona Brankin: There are a couple of issues there. You will be aware that the bill introduces powers to allow the commission to tackle dereliction where landlords have not done so. There has been a bit of a misunderstanding about some of the powers that the commission has. The bill—not the proper occupier proposal—introduces new powers to enable the commission to step in and tackle dereliction and misuse in a way that it has not been able to before. Therefore, the bill increases the range of actions that are available to the commission.

I understand that there are concerns about the number of times that the commission has intervened to address absenteeism. Shane Rankin may want to talk about that.

Shane Rankin: I will respond specifically on the notion that the commission has not challenged absent owners. In the past 10 years, 44 notices have been served on absent owner-occupiers. What is really interesting about that figure is that 41 of those 44 owner-occupiers decided to seek tenants themselves; the commission did not have to impose tenants on them, so the commission's usual approach of pressing, pushing and encouraging people to address their failure to comply with their obligations was successful. Right up to the point at which it could have enforced the law and imposed a tenant on an occupier, the commission pressed those owner-occupiers and they chose to resolve their own situation.

On Maureen Macmillan's point about the other market issues that must be considered, owner-

occupation is being addressed because that is one area in which there are concerns, of which the cost and value of tenancy assignments are part. Concerns have also been expressed about owners' ability to avoid regulation, to begin to asset strip crofts whenever they are pressed and to seek decrofting. The proper occupier provision addresses such concerns by discouraging tenants who are absent from becoming owners in order to avoid regulation. It makes it abundantly clear that they cannot avoid regulation and obligations to work the croft and that they will have to do exactly the same things as a proper occupier as tenants have to do. It levels up the playing field and puts the same obligations on a proper occupier as exist for a tenant and makes that clear in legislation in a way that it has not been before.

Maureen Macmillan: Are people's perceptions wrong if they think that the commission is not using its powers of regulation as it should? Is there room for improvement?

Rhona Brankin: Having listened to much of the evidence that has been given, I think that there is room for improvement, but the commission must be given clear guidance. One of the advantages of the bill is that it gives the commission new powers to tackle dereliction and misuse, which I very much welcome. The proper occupier amendment will clarify the situation and give the commission a framework for action in tackling owner-occupiers who are not living on or crofting their land. The commission needs to take tougher action, and that is one of the reasons why the bill has been introduced. It is certainly the reason why the concept of a proper occupier is being introduced, because the commission taking tougher action will impact on the market. A person will think carefully before buying a croft if they understand that they will have to live on and work the croft and that, if they do not do that, the croft can be relet.

Mr Brocklebank: I want to carry on with a few more questions about the need for the proper occupier. From what Shane Rankin has said, and from what we have heard before, we know that it was already possible under existing legislation to take steps to impose a tenant on a difficult landlord or a landlord who was not acting in the spirit of crofting. Why, then, will the proper occupier provide the framework that you are looking for? Why is that necessary, when you apparently have the powers already?

Rhona Brankin: I will ask the solicitor to comment on that, because it is quite important that we have that set out clearly.

Ethel Burt (Scottish Executive Legal and Parliamentary Services): The powers that are being introduced relate specifically to owners, rather than to tenants. In the existing legislation, there are certain powers relating to tenants, and

certain obligations, expectations, rights and duties on tenants. However, what we are proposing in the bill is a similar, but not exactly the same, set of obligations, rights and duties on owners, so that the owners' crofts are kept in the same state as tenants' crofts are expected to be kept at the moment. The two sets of obligations, rights and duties cannot be exactly the same, because tenants do not have the same legal status as owners. They have a different form of tenure, so the provisions relating to tenants and to owners have to be similar but not exactly the same. There is a need to have a new set of specifications for owners.

Rhona Brankin: To clarify, I do not believe, and the reference group that I asked to consider the issue did not believe, that the commission has sufficiently tough powers to deal with owner-occupation in a way that impacts on the market. That is why the proper occupier proposal has been produced. For the first time, we will set out a framework within which the commission will have the power to take action, which will make it easier for the commission to do so. Under the bill, ministers will for the first time be able to give specific directions to the Crofters Commission. The Crofters Commission will have the power to take action and the ministers will have a power to give specific direction to the commission, for example, to use powers to deal with people who do not properly occupy their croft.

Mr Brocklebank: The minister said that part of the reason for introducing the proper occupier provision is to help to dampen down the market in crofts. As I asked Shane Rankin at a previous meeting, will the measure really achieve that, given that the market that is really overheated is the one in croft houses? That is what drives the market for crofts—people want to buy croft houses. What is to stop somebody who is chased by the commission for not being a good occupier, and who is told that a tenant is to be imposed on him, simply decrofting his house and selling it to the highest bidder? The land would still be available but, as we have heard, tenants will not necessarily be waiting to take on land without a house. Further, under the planning regulations, any incomer will not necessarily get planning permission to build a house on the vacant croft. Therefore, how will the proper occupier measure act as a dampener?

Rhona Brankin: For a start, the person would not necessarily lose the house. The important point is how the land is being worked. The clear evidence from the gentleman from the Royal Institution of Chartered Surveyors was that the burdens will impact on the market. However, the person in your example would not necessarily lose the house.

Mr Brocklebank: Surely that is the point. The house could be decrofted and the person could sell the house willy-nilly. The land would remain—it is the land that we are talking about—but any incoming tenant would not necessarily get planning permission to build another house on the croft. So the incoming person might just get 5 acres of ground somewhere that he has to try to make a living out of. Is that a reasonable proposition?

Rhona Brankin: In the past, when an older member of a family has stayed on in a croft house, the local authorities have looked favourably on proposals to build another house. There is support for new-build croft houses.

Shane Rankin: As Ted Brocklebank says, it is a possibility that a house could be decrofted. However, it is also possible for an absentee owner or an elderly crofter who wants to give up the land to do that. The objective has always been to ensure that the land is used. Hence, as the minister just explained, local authorities have been pretty liberal about allowing new croft houses to be built on bare land or vacant crofts. The proper occupier proposal seeks to encourage that. If an owner-occupier has a house and bare land that they do not use, they will have the same option as an absentee owner to remove the house from the croft.

Rhona Brankin: The issue links back to the fact that the Crofters Commission will potentially be a statutory consultee in the planning process and to the engagement of the crofting community in the planning process.

Mr Brocklebank: Yes. However, planning apart, if the new tenant has only 5 acres of ground and does not have a croft house, as it has been decrofted, what collateral can he use to go to someone to ask for money to put a croft house on the land? He will simply be a tenant on bare land.

Rhona Brankin: The issue depends on who the potential tenant is. It might be someone who lives nearby and who does not need a house. The important thing is that, at the moment, we have no way of ensuring that croft land is used appropriately. The proper-occupier proposal will ensure that we can do that.

11:45

Richard Lochhead: We have heard several times that the purpose of the proper occupier amendment is to dampen the market. In your view, minister, what are the dynamics of the market? Why has it overheated?

Rhona Brankin: One of the main reasons relates to the housing shortages in crofting counties. A couple of days ago I was in Mull,

where affordable housing is a major issue. Such shortages are more acute in areas of natural scenic beauty, such as Mull, where many second homes are being bought. The proper occupier amendment will be important because it could impact on second-home ownership. If people understand that they will be required to be proper occupiers, there will be a burden on the market. That should impact on the price.

Richard Lochhead: I suspected that that might be your answer. We are using crofting legislation to deal with housing issues in some parts of Scotland. Previous witnesses—especially those we have heard from today—have said that this is a complex and overbureaucratic way of addressing the issue. The bill is too complex already. Should not ministers find other ways of addressing the housing shortage in remote parts of Scotland?

Rhona Brankin: The evidence that you heard was mixed. Derek Flyn is a solicitor and he said that our proposal was a relatively straightforward way of dealing with some of the issues of owner-occupation.

Of course ministers must take a variety of steps to deal with housing problems in rural areas. As I say, those problems are acute in some crofting areas. I was in Mull on Monday for the announcement of the first affordable homes under the Scottish forest land scheme. That scheme is a collaboration between the West Highland Housing Association, Communities Scotland and the Forestry Commission. I am keen to see that work develop. We must ensure that affordable housing is available so that people can live and work in crofting communities. By creating new crofts, land that was not croft land can become croft land. People will then be able to access support to build houses.

The Crofters Commission is taking action to tackle dereliction and misuse and to tackle problems where people are not proper occupiers. That action should release crofts. A variety of things should be happening—it is not just about the bill. The bill will enable new crofts to become available. However, the Crofters Commission is being given tougher powers to deal with the situation if crofts are not crofted appropriately. That should release crofts for the 900 people who want to become crofters.

Richard Lochhead: The market is overheating because of a lack of housing in remote areas of the Highlands and Islands. Had the Government provided affordable housing, the main motivation behind this amendment would not exist.

Rhona Brankin: I do not think that that is true. If one wants sustainable communities, people should be required—whether they are owner-occupiers or crofters—to use their land in a

sustainable way. The proper occupier proposal was made because there was pressure to do something about the market, but if one considers it and the evidence that has been given today about the thinking in the past about the importance of regulating owner-occupiers, one sees that it touches on several important areas. It responds specifically to concerns about the market, but it works on several different levels, as members have heard.

Elaine Smith: I want to ask a supplementary question to those that Maureen Macmillan and Alasdair Morrison have asked. The Executive's explanatory paper on the proper occupier proposals states:

"Ministers have proposed that crofting law should be amended to clarify the status of owners of crofts to distinguish between those who actually live on or work their crofts and other owners of crofts. They propose that this should be coupled with a much more aggressive use of the existing Crofters Commission power to require owners of vacant crofts to re-let their crofts."

I am interested in the second sentence. I think that Shane Rankin said in response to Maureen Macmillan that the Crofters Commission already uses its powers to act on absenteeism quite well. I am interested in what

"a much more aggressive use of the existing ... power"

would be and what the resource implications are of such a use of the existing power.

Rhona Brankin: A key part of the bill is consideration of ways in which straightforward transactions can be simplified in order to reduce the huge amount of bureaucracy that surrounds simple and straightforward transactions by the Crofters Commission. One thing that the bill will do is simplify and streamline the bureaucratic procedure where there are simple assignments, for example, and where there are no problems with the community, which is happy with what has been proposed. Such processes should be simpler. The Crofters Commission should then be freed up to take tougher action.

What was the second part of your question?

Elaine Smith: Will there be resource implications if the existing power is to be used much more aggressively?

Rhona Brankin: That links into the answer that I have given. At the moment, the Crofters Commission acts in a way that ministers perceive to be unnecessarily bureaucratic. As I have said, we want to be able to streamline straightforward transactions to ensure that the Crofters Commission can take action that will make a difference in releasing crofts and ensuring that they are used appropriately.

Elaine Smith: There seems to be a view that the proposals will make the process more convoluted. However, in the discussion this morning, on the whole, people thought that if the bill is to be passed, it would be better to include the proper occupier amendment.

The proposals spring from the right to buy. I want to follow up on what Richard Lochhead asked about. I am still not clear why the right to buy is still fundamental to crofting. The Executive's explanatory paper says:

"The right to buy is an essential feature of the relationship between the crofter and landlord. It provides the croft tenant with a sanction that can be applied to an oppressive or obstructive landlord."

Are there not other ways of providing sanctions?

How might the proper occupier proposals affect the lending of capital or money on the basis of croft ownership? Is there not a threat to banks and so on? Would they be as anxious to lend capital to proper occupiers?

Finally, I have a question that is slightly different from the question that I asked this morning on whether the bill is better with or without the amendment. If the bill does not proceed as envisaged, could the proposals be introduced in any other way to tighten up regulation? The proposal is to amend the bill, but could a stand-alone piece of legislation be introduced?

Rhona Brankin: As the member knows, crofters' right to buy was introduced in 1976. That right provides a safety valve for many crofters against landlords who could give them considerable difficulties. There has always been a debate about the right to buy. Some people feel passionately that it should never have been introduced, but many crofters have taken advantage of it. The consultation revealed no clear call to do away with the right to buy. It exists and, as I said, the proper occupier scheme is a way of dealing with some of its knock-on effects. There was no demand to take away the crofters' right to buy. Many crofters fought for it for many years.

You asked whether there would be any way of dealing with the proper occupier scheme in stand-alone legislation. My understanding is that there would not, but I ask Shane Rankin to add to that.

Shane Rankin: As I understand it, there is no way of modifying the current legislation by statutory instrument. There is very little provision in the Crofters (Scotland) Act 1993 that would allow us to change anything, so we need primary legislation to implement the proper occupier proposal or virtually anything else.

The Convener: Why not just repeal the key elements of the 1993 act if you feel that they are inappropriate and out of date? That is what normally happens.

Ethel Burt: I am sorry, but I do not quite understand what you mean. Are you suggesting that we repeal the whole of the 1993 act?

The Convener: Well, you could repeal key sections. We regularly agree to bills that change provisions that are in existing acts.

Ethel Burt: There is no provision in the 1993 act to allow that. We would have to provide it by primary legislation.

The Convener: I think that that is what Elaine Smith is saying. We have a bill in front of us, so why are you not using that vehicle?

Elaine Smith: No, I am not. In the round-table discussion this morning, I asked whether it is better to include the proper occupier scheme if the bill goes ahead. I suppose that I am asking the minister whether, if the bill does not go ahead, that means the end of any proposals on changing the status of owner-occupier crofters. Could the proper occupier scheme be introduced in any other way or does it have to be part of the bill? If the bill was to be shelved—I am not suggesting that it should be—would the proper occupier scheme also have to be shelved? Is there no other, stand-alone way of introducing it to change the status, tighten up regulation and make it easier to deal with absenteeism?

Ethel Burt: We cannot introduce the proper occupier scheme by secondary legislation under any existing primary legislation. The only other way that we could introduce it would be to tack it on to another bill on appropriate subjects, and I know of none. I suppose that we could also have a small, separate bill for the scheme on its own, but it has to be introduced by primary legislation of some form.

Elaine Smith: I also asked whether the introduction of the proper occupier scheme would pose a problem for lenders' security. Is that a problem or should I not worry about it?

Rhona Brankin: No. It would be intended to give security and enable crofters to borrow money more easily. I ask Ethel Burt to give the details.

Ethel Burt: Lending institutions are not altruistic organisations and they are interested only in lending on property that they can repossess and sell in the event of default. That is what they do and how they get their money back. I think that, when lending to a proper occupier, it would give lending institutions some comfort to know that, in the event of default, the property could be sold with the advantage of the proper occupier status. It would have an enhanced status.

Elaine Smith: So it is just about property and not also about lending for capital equipment. I am just not sure about where the security comes in, which is why I am asking you. Would lenders be

keen to lend to someone who might be found not to be a proper occupier and have a tenant imposed? I am not sure about that.

Rhona Brankin: In essence, that could happen now. The proper occupier scheme would give the lender more confidence because the person would have proper occupier status.

Elaine Smith: Okay.

12:00

The Convener: On the timing, a buyer applies for proper occupier status after they have bought the property, so a lender could find out that they were lending to someone who was not eligible to be a proper occupier after they had lent them the money.

Shane Rankin: The advantage of the arrangements as laid out in the paper is that it would be abundantly clear to lawyers who are acting for anyone in the crofting counties what the new owner of the croft had to comply with to get proper occupier status and what would befall them if they did not secure it. The arrangements make it clearer to lenders and borrowers where they all stand.

Nora Radcliffe: I have a question about lending and borrowing, although it will take us down a different route.

The SRPBA submission suggests that part of the reason why people buy crofts is that they need security to borrow money for capital investment. As an alternative solution, it suggests we look at crofting tenancy. Because a tenancy runs on a year-to-year basis, people cannot borrow money against it. I think that I am reading that right. The submission goes on to say that an amendment to conveyancing legislation to

"include croft tenancies in the definition of a real right would mean they would be available as security."

I presume that that has been considered, but I thought that it might be useful to get a legal opinion on that.

Ethel Burt: I have looked at that, and it relates to croft tenancies.

Nora Radcliffe: Yes, but people buy crofts partly to gain an asset against which they can borrow. Is that a fair statement?

Ethel Burt: The SRPBA wanted croft tenancies to be put into the Land Registration (Scotland) Act 1979 so that crofters would be able to borrow money on the strength of a tenancy. However, that would change the whole concept of land tenure. What about other forms of short tenancy? Would that not open the floodgates? It would be inappropriate. What we are planning to do is much fairer. Allowing crofters to borrow on the strength

of a tenancy would make croft tenants a special case and I do not think that that would be very popular.

Rhona Brankin: People buy crofts for a variety of reasons. Some will buy their croft in the hope that they can avoid regulation.

Ethel Burt: I suppose that what you said is technically correct; that could be done. Whether anyone would want to do it is another matter because it would change the nature of land tenure.

Nora Radcliffe: It is useful to get a comment on that because we had only one side of the argument.

Elaine Smith: What is the status of a lender if a crofter is no longer deemed to be a proper occupier? Are there any implications for lenders? If the proper occupier of a croft has borrowed money for whatever purpose, what is the lender's status if the Crofters Commission takes aggressive action to say that that person is no longer a proper occupier?

Shane Rankin: The proposals will give lenders a year in which to rectify the situation. If a lender becomes the owner of a croft where there has been—

Elaine Smith: I am sorry; did you say that the lender would become the owner of the croft?

Shane Rankin: The lender would have a year to rectify the situation by putting the croft on the market and finding a proper occupier to take it over, or an owner to take it over and a tenant to follow on. The proposals contain provisions that will allow that to happen.

Elaine Smith: Do you think that lenders would still be happy to lend on that basis? Would they not see that as a hassle?

Shane Rankin: They might think that it is a hassle, but the disadvantages are outweighed by the advantage of being abundantly clear about what everyone has to comply with to secure proper occupier status and to maintain their security.

Elaine Smith: I am trying to tie everything up to what Nora Radcliffe was asking about. Apart from getting away from bad landlords, an advantage to the crofter of having the right to buy is having access to capital that they did not have before. I am just wondering whether proper occupier status would put a damper on that. I am asking because I genuinely do not know.

Rhona Brankin: Our advice is that proper occupier status would make it less risky for lenders to lend money.

Maureen Macmillan: I am getting more and more confused. I presume that the proper occupier

proposals are to do with the land, but could someone be put out of their house if they stopped being a proper occupier?

Rhona Brankin: It depends on whether the house is part of the croft or whether it has been decrofted.

Maureen Macmillan: So if someone was a proper occupier, the first thing that they would do would be to get their house decrofted so that they would have that security.

Rhona Brankin: Yes.

Rob Gibson: I want to go way back. Have you proposed any amendments to the Planning etc (Scotland) Bill to make the Crofters Commission a proper occupier? [*Laughter.*] Oh, this is just crazy, isn't it? But you know what I mean. I mean, have you proposed amendments to make the Crofters Commission a consultee? How would that be done and how will crofters input to the Crofters Commission's approach?

Rhona Brankin: Johann Lamont is the Deputy Minister for Communities and she is dealing with the Planning etc (Scotland) Bill. She has given a commitment that ministers will look into the issue. I have met Malcolm Chisholm and it was suggested by the chief planning officer that it will not require primary legislation. I understand that that is the case. If it would give people comfort, it may be possible to include something in that bill. The important thing is that it happens, but I understand that it will be done through secondary legislation.

Rob Gibson: Under the present proposals, how will crofters be able to input to the view that the Crofters Commission takes on any particular matter?

Rhona Brankin: The Crofting Reform etc Bill will set up local panels and engage crofting communities in the strategy for the development of those communities. That idea underpins the way in which we envisage the Crofters Commission working. It will not be a top-down approach; it will be a bottom-up approach. In Knock and Swordale, the Crofters Commission is working with the crofting community on issues such as affordable housing.

The developmental role of the Crofters Commission will be strengthened by the bill. That strengthening will be coupled with improvements in the way in which crofting communities are engaged. That is a hugely important part of the bill.

Rob Gibson: I want to tease out two issues with regard to the market. The first involves the price that people will pay for a house with a nice view. However, a second issue arises. If a crofter is being looked after by a relative, but the crofter is then taken into care, or dies, there will be an

assessment of the value of the crofter's estate. Have you discussed values of estates with the Treasury? The value of the estate at inheritance could mean that the relatives could not afford to take the croft on.

Shane Rankin: That relates to section 17 of the Crofting Reform etc Bill and the clarification of the debt position if a number of family members dispute the assets of the deceased crofter. We have tried to make the bill clear and simple and to keep it in line with other succession situations.

I think that it was Derek Flyn who talked about the Inland Revenue recognising that a croft had a value. In proposed new subsections (4E) to (4G) of section 10 of the 1993 act, we try to make it clear that a croft has a value and that that must be accepted when a crofter dies and a dispute arises over the assets. We are simply trying to be practical and recognise that; we are not trying to do anything fundamentally clever or to get into the issue of whether the value of the croft may be more than one or other of the family can afford.

Rob Gibson: I am not talking about disputes; I am talking about the valuation of the croft at inheritance. I would have thought that if we were trying to dampen down the market, we would want to say to the Inland Revenue, through the Treasury, that crofts should be treated as part of a regulated market and that, therefore, their value should be added up in a different way from the value of freehold property.

Shane Rankin: We understand the point and there is obviously merit in the argument, but the reality often is that families in which there is more than one potential beneficiary start to debate whether the croft has a value. Pretending that it does not have a value does not resolve that or help the transfer of the croft.

Rob Gibson: I am not saying that the croft does not have a value. My point is that you do not seem to have done anything through that mechanism to effect a reduction in the market value of the croft.

Shane Rankin: I do not think that I can say anything more on that.

Rob Gibson: Okay. I have a final question that is related to what we are talking about. It will take resources to deal with all these issues; it will also take time. Has the minister decided how long the proper occupier registration, and so on, will take to carry out? We know that 170 or so cases are at issue just now. How long will it take?

Rhona Brankin: That will have to come after discussion among ministers. We will have to look at the timetable. Ministers will be required to give guidance to the Crofters Commission about how long they want the process to take and what sort of targets should be in place. Ministers will provide

those targets and it will be up to them to give clear guidance to the Crofters Commission.

Rob Gibson: Will that be done by saying to the Crofters Commission that it has a duty, or will it be done annually through a set of targets?

Rhona Brankin: Proposed new section 2B of the 1993 act states:

"The Commission shall discharge their functions in accordance with such directions of a general or specific character as may from time to time be given to them in writing by the Scottish Ministers."

I see that working in the same way as it works with other non-departmental public bodies. Ministers should give directions to the Crofters Commission annually, and an annual report will come back from the Crofters Commission—as it does at the moment—setting out progress against targets that ministers have set.

Rob Gibson: That is what has been happening for the past 50 years. Ministers have been setting targets and the Crofters Commission has reported, yet we are in the mess that we are in.

Rhona Brankin: No. Critically, the bill states that, for the first time, ministers will set specific targets. The problem in the past was that there was not enough specificity. I am keen to ensure that the Crofters Commission has very specific directions from Scottish ministers. The bill allows that. It also ensures that, for example, when the committee looks at the Crofters Commission's annual report, the extent to which the commission is meeting the specific targets that have been set by ministers is clear.

The Convener: There is nothing to prevent you from setting directions in guidance to the Crofters Commission at the moment.

Rhona Brankin: It is general guidance; it is not specific. There is a key difference between the bill and the 1993 act. Section 1(3) of the 1993 act states:

"The Commission shall carry out their functions in accordance with such directions of a general character as may be given by the Secretary of State and in carrying out their functions shall have regard to local circumstances and conditions."

We believe that proposed new section 2B strengthens that significantly.

12:15

Mr Morrison: The proper occupier amendment is being sold to us as the silver bullet that will sort out the market and deal with a plethora of issues. For the sake of clarity—I recognise that the words "clarity" and "clarify" have been used a lot this morning—can someone tell me what is currently expected of an owner-occupier?

Rhona Brankin: I think that we need to have clarity about why we need the proper occupier.

Mr Morrison: That is why I am asking.

Rhona Brankin: I have tried—I will let Shane Rankin have a go.

Shane Rankin: As I explained last week, there has been a long-standing policy in the Crofters Commission, since the right to buy was established in 1976, to recognise that Parliament gave crofters the right to buy on the assumption that they were going to live on and work their crofts. It was not the intention of Parliament that crofters were to be treated as landlords, or that if a crofter bought his croft, suddenly he would have a tenant imposed on him. That is the long-standing approach that has been taken by the Crofters Commission.

In the cases that I mentioned, in which the commission imposed a tenant or pressed for reletting of the croft, the owners were absentees who were not occupying the croft. It is really in those circumstances that the commission is able to address the situation. There may well be a strong feeling within a community that a croft is not being used or is being wasted in some way. That power can be used in those circumstances. However, the approach has, essentially, been to accept that an owner is an occupier—as Parliament intended—and not to impose tenants on them.

Mr Morrison: As things stand on 14 June 2006, an absentee owner-occupier is in effect a landlord of a vacant croft. That is generally accepted.

Shane Rankin: Yes.

Mr Morrison: Is it possible, under existing legislation, to impose a tenant on that person and deal with all the issues that are contained in the proper occupier proposal? Do you have existing powers to deal with owner-occupiers who are not resident on their crofts—who are absentees?

Shane Rankin: It is possible to impose a tenant, yes. The legislation allows that. The great advantage of the proper occupier proposal is that it sets out a process by which it becomes abundantly clear to the owner that they have to comply with obligations that are placed on them—that they have to meet the same requirements, essentially, as a tenant. They must live on or near the land and they must work the croft.

The problem with the measure in the current legislation is that it is a drastic option. If a tenant is imposed on an owner of a croft, the new tenant is in effect given the option to buy the croft from the owner. That is a fairly drastic move, especially if it is assumed that, in 1976, Parliament did not intend owner-occupiers of crofts to be treated as landlords.

The proposal is about establishing a staged process that leads people to the irrevocable conclusion that they have to have a tenant imposed on them, but it leads them there in a way that allows them to rectify the situation at their own hand without the commission having to take drastic action.

Mr Morrison: So the current provisions are a drastic option that does not address the issues that concern us and the proper occupier proposal is not a drastic option, but it will address the issues that concern us.

Shane Rankin: The final step in the proper occupier proposal is a drastic option—just as drastic as the reletting that is possible under the current legislation.

Mr Morrison: So, we have a less drastic—

Shane Rankin: There is clarification in the proposals of what duties proper occupiers have to fulfil.

Mr Morrison: We have heard several witnesses today and in all the other sessions talking about the Crofters Commission. I know that you are not here to speak on behalf of the Crofters Commission. There is a lack of confidence in the commission and a feeling that, in the real world that we all inhabit, the proper occupier proposal is not enforceable. That is the issue with which we must deal. As legislators, we must discuss and evaluate the implementability—I suspect that there is no such word—of what is before us. A drastic option currently exists, but we are going to move to a less drastic option that still has a drastic element. Will that measure be enforceable in the real world?

Rhona Brankin: We would not have introduced the proper occupier proposal if we thought that it was not enforceable. I emphasise that we have introduced the proposal in response to demand for it.

Mr Morrison: It is estimated that we currently have 150 absentee owners. After the passage of the bill, how long will it take until we move to the magic number of zero?

Rhona Brankin: It will be up to ministers to decide what action is required and with what speed they want the commission to take it. We will take advice from the commission on that, but the decision on the directions will be for ministers.

Mr Morrison: If we are to support the proposal—if we replace the drastic with the less drastic—how enforceable will the less drastic be and how long will it take?

Rhona Brankin: I do not accept your premise that the proper occupier proposal is “the less drastic”.

Mr Morrison: I was quoting Mr Rankin.

Rhona Brankin: We need to ensure that we have clarity and that the Crofters Commission has the tools in the toolbox that it needs to take action against people who are not proper occupiers. The timescale for doing that will be affected by other actions that the commission is required to take. In addition to taking action against people who are not proper occupiers, the commission will be required to take a range of action, including action against absentee tenants and working with crofting communities on issues such as affordable housing. The bill will bring clarity. For the first time, ministers will be able to give specific directions to the Crofters Commission, which is what ministers will do.

Mr Morrison: You have mentioned some of the other responsibilities that the Crofters Commission will have, but, in the pursuance of clarity, I want to return to the proper occupier amendment. How long will it take for the Crofters Commission, having consulted ministers and vice versa, to move us from the present situation in which we have 150 absentee owners of vacant crofts to the magic number of zero? That is a simple and straightforward question.

Shane Rankin: I cannot give a simple, straightforward answer.

The Convener: I suppose that the question, which has arisen in previous meetings, is to what extent the proposals are a priority. The measure was not in the bill initially. A range of issues has cropped up in the past few weeks since we took evidence from the minister in Inverness, which seems a while ago. We are trying to get to the bottom of how important the proposals are, how important it is to plug the loophole and how the measure will be put into effect.

Shane Rankin: Last week, I explained to the committee in private that we envisage that the proper occupier provisions will be managed, implemented and enforced in the same way that the provisions on absentee issues or neglect and abuse issues will be dealt with. I suggested that those three large issues will be managed through the use of local policies for parts of the crofting counties that establish how the communities there want the issues to be dealt with in their locality. For instance, a local panel in Lewis might take a view on the emphasis and priorities that it wants, which might be influenced by the available resources and the directions by ministers.

Two or three years after the bill is enacted and the commission is established, we will have in place local policies and a panel for Lewis. We will have undertaken survey work to establish the exact numbers of absentee owners, absentee tenants and people whose occupation of the croft

is questionable and the levels of neglect. The panel will give a sense of what priorities it wants to apply and how it wants them to be varied throughout Lewis. There would then be the opportunity, within that timescale of two or three years, for the commission to initiate the action that is required to deal with those matters. The commission will be able to deal with those issues much more confidently and clearly on the back of the ministerial guidance, the local policy that was arrived at in the community and the clarity in the bill, which will make it abundantly clear to communities and individuals what their obligations are.

Mr Morrison: The proper occupier proposal has been packaged with the message that the commission will have a serious job of work to do and the tools to do it with, although apparently it will not need any more finance to see the proposals to their logical conclusion. Perhaps the minister and her lawyer can help me to see exactly where the proposed amendment specifies that the commission will have a duty to enforce what is stipulated in the proper occupier proposal as opposed to relying on neighbours snooping on one another. Where does it say categorically that the commission will be duty bound to deal with people's proper occupier status as opposed to just relying on complaints? In fairness to the minister, I expect that the lawyers will be better prepared to answer that question.

Ethel Burt: There is not a specific duty on the commission as it exists at the moment.

Rhona Brankin: As stated in our paper,

"the Commission may decide to intervene if there is an objection or where the conditions for intervention apply."

The conditions are set out whereby the commission can decide to intervene. Further, as the paper states:

"Failure to intervene will constitute approval and on approval the Commission must record in the Register of Crofts that the applicant is a Proper Occupier."

The onus is therefore on the Crofters Commission to maintain an up-to-date register and it must state on the register of crofts where a person is a proper occupier. As set out in proposed new section 2B of the 1993 act, ministers will give directions to the Crofters Commission to take specific actions.

Mr Morrison: I am trying to reconcile the minister's quotations with what Ethel Burt said. Is the minister saying that, as she reads what is drafted, there is not such a duty?

Shane Rankin: Can I just—

Mr Morrison: No. With respect, Mr Rankin, it was Ms Burt who helpfully said that there is not a duty.

Shane Rankin: Convener, may I continue?

Mr Morrison: With respect, convener, I asked for clarification from the solicitor. I am trying to reconcile what Ms Burt said with what the minister said.

The Convener: We have the draft amendment in front of us and the proposed new section 23B says that if the commission has received objections, it must act to intervene with respect to the application, but it may intervene in any other case. It would be helpful to get clarification on that. My interpretation is that if someone complains, the commission must act, but if no one complains, action is entirely discretionary. Is that the point that you are trying to get to, Alasdair?

Mr Morrison: Yes.

Rhona Brankin: The onus is on the proper occupier to take action to ensure that they are a proper occupier. The Crofters Commission must record in the register of crofts that the applicant is a proper occupier.

Mr Morrison: So the commission may act if no one objects, but it must act if someone does object.

Rhona Brankin: No, the onus is on the proper occupier and on the Crofters Commission to record in the register of crofts that a person is a proper occupier.

The Convener: We were looking at the section entitled "Proper occupiers by application", whereby somebody

"may apply to the Commission to be granted the status of proper occupier".

Rhona Brankin: I am sorry, convener. Where is that?

The Convener: I am quoting from proposed new section 23B. It concerns people who want to become proper occupiers.

12:30

Shane Rankin: The question is whether the Crofters Commission "must act" or "may act" in relation to a complaint. In essence, it is "may". The situation is similar to that for absenteeism: in some circumstances, one would not wish all the tests to be applied. There could be reasons why a proper occupier could not comply with everything, or why one would want to accept some compromise for the proper occupier. It was for similar reasons that I said that absenteeism was not an absolute when I explained the use of local policies. As Ted Brocklebank brought out last week, there can be circumstances in which people have a good reason for not living on their croft all the time. There is, therefore, a measure of discretion.

The provisions create a mechanism by which the proper occupier, on transferring or selling their croft, has to notify the Crofters Commission. The Crofters Commission would then have an opportunity to test whether a person was acceptable as a proper occupier, and to intervene and remove proper occupier status if that was appropriate to the local community.

Rhona Brankin: There are specific requirements, but there is also a general requirement on the Crofters Commission to act in accordance with specific directions that the minister may give, in order to tackle problems with owner-occupiers.

Mr Morrison: The discretion would logically extend to cover the situation in which neighbours object—phoning or writing to complain. That situation could be a "may" as opposed to a "must".

Shane Rankin: Yes.

The Convener: Proposed new section 23B says "must" for interventions in respect of the application.

Shane Rankin: The commission must intervene and consider it—

The Convener: The commission must consider it, I presume, and must publish its view.

Shane Rankin: But what the commission does next is the "may" part.

The Convener: That takes us to subsection (9) of proposed new section 23B, which concerns the conditions that must be considered by the commission.

Shane Rankin: Yes.

The Convener: That is for people who are applying to become proper occupiers. Proposed new section 23A is entitled "Proper occupiers other than by application". In that section, it is assumed that someone is a proper occupier if, at the time of enactment of the bill, they happen to be an owner-occupier on a croft.

Rhona Brankin: If someone has bought a croft from an existing proper occupier, they too would be termed a proper occupier. They would then have a certain amount of time in which to register a change of use. In theory, the Crofters Commission could take early action, because the person is deemed to be a proper occupier from when they first acquired the croft. That could be a powerful provision for the commission.

Eleanor Scott: Under the proposed system, a person could legitimately be a proper occupier of more than one croft. They might therefore be the owner of more than one croft house. Would they be able to let a house that they did not occupy under a short assured tenancy?

Rhona Brankin: I cannot give you an immediate answer, but I will get that information to the committee within a day.

Eleanor Scott: The bill suggests that people would be able to use the croft house only for holiday lets.

Rhona Brankin: I will be happy to clarify that.

The Convener: Yes—the committee has wondered about that issue before.

Eleanor Scott: The Executive has suggested that, under the existing laws, using the power to require the reletting of a croft of an absentee owner-occupier would have human rights implications. Would it? What are those implications? How would they be lessened under the proper occupier proposals?

Ethel Burt: I am not sure that I understand the question.

Eleanor Scott: What are the human rights implications of reletting the croft of an absentee owner-occupier under the current system? Are there fewer human rights implications under the proper occupier proposals?

Ethel Burt: I think that there would be human rights implications if the proposal were to relet a house that is the principal home of the proper occupier.

Eleanor Scott: So it depends on whether the house is the person's principal home.

Ethel Burt: Yes. There may be human rights implications, but I would have thought that nobody would be deprived of anything if the land is not being used.

Shane Rankin: The other benefit of the proposals as they stand is that people's obligations to protect their situation and maintain their security will be made explicit. I think that doing so will increase the security of the legal provisions that are proposed in the European convention on human rights.

Eleanor Scott: Do you think that, in the past, people who have bought crofts have not been made aware that they are crofts?

Shane Rankin: It is probably better not to answer that question.

The Convener: With regard to the number of crofts that a proper occupier can hold, how was the number four reached? What considerations were involved?

Rhona Brankin: We came to a figure because there was a need to distinguish between crofters and estate owners. The proposal to allow owners to let their crofts in the same way that tenants can sublet was consulted on. The figure that was

reached reflects the concern about people accumulating large numbers of crofts, which would, in effect, mean that there would be activities that are more akin to straightforward farming than to crofting. However, the figure is not set in stone and we would be interested in hearing committee members' views on it.

The Convener: In evidence that we have taken over the past few weeks, it has been said that crofts are quite small in some parts of the country. Maureen Macmillan has mentioned that people accumulate many crofts on Tiree, but that crofts are much larger in other parts of the country. Different circumstances exist. We simply wondered how the number four—which, it has been suggested, should be included in the bill—had been reached.

Rhona Brankin: Working with areas of crofts would be difficult. We thought that working with numbers of crofts would be marginally easier. I understand that although families have accumulated large numbers of crofts on Tiree, individuals do not hold more than four crofts there. The calculation was not easy, but we thought that using the number four was a practicable way forward. Some people think that there should be one croft per crofter, but we did not think that that was a practicable way forward.

The Convener: Why has not a similar limit been suggested for croft tenancies?

Shane Rankin: There was no intention to limit croft tenancies in the bill as a whole or in the proper occupier proposals. It is well known that, in the 1960s, the Crofters Commission had a policy of amalgamation, which was encouraged by Governments; many crofters have legitimately accumulated substantial numbers of crofts—the largest number that I have heard of is 25, which was somewhere in Shetland. In the consultation exercise, there was no mood to make restrictions on tenants and there has been no subsequent reaction. The committee has received evidence on the proposal to have one croft per crofter, but the reaction may be an isolated case.

As you have heard in evidence today, there are many farm businesses on Tiree, for instance, that have been built up on the back of 12 or 15 crofts. If some of those arrangements were to be dismantled—the commission could do that, particularly with regard to informal arrangements for absentee crofters—the economy and community would be destroyed. A measure of discretion is required and a recognition that one has to be practical about the issue of how crofters have come by the number of crofts that they have.

On the proper occupier issue, in relation to which a four-croft threshold will be set, there is recognition that intervention by the Crofters

Commission can be triggered if an owner or tenant has that many crofts. That is about recognising that there is a mood to discourage multiple occupancy and the accumulation of more crofts, but recognising also that there will be circumstances in which that will be legitimate and appropriate. The commission will have discretion to consider that.

The Convener: When we try to insert something specific in the bill, the Executive usually tells us that that matter would be better dealt with in subordinate legislation. However, the issue that we are discussing is in the bill. Including a specific number in the bill implies that there will not be a huge amount of discretion.

Shane Rankin: Yes, but there is a host of detailed stuff on the matter in previous primary legislation on crofting. As far as I understand it, the issue that we are discussing follows that pattern.

The Convener: So an attempt is being made to stay in tune with existing crofting legislation rather than to modernise the way in which we deal with crofting.

Shane Rankin: You could look at it that way.

Nora Radcliffe: I understand that the four-croft threshold is not an absolute threshold; it is just a number that, if reached, triggers consideration but not necessarily punitive action.

Shane Rankin: That is right.

Rhona Brankin: It is important that we do not make people who have a number of crofts worry that their living will suddenly be taken away from them. However, we need to be able to deal with the issue of people who are becoming proper occupiers. There needs to be an understanding that, given the number of people who are on the waiting list for crofts, there are issues around multiple tenancy and multiple ownership.

The Convener: On the issue of the right to buy a new croft, there is an argument that tenants should have the right to buy. However, if they take a new croft, they will not have the right to buy. What happens if, at some point, a good landlord is replaced with an unsympathetic landlord? Does the fact that they do not have a right to buy exist in perpetuity?

Rhona Brankin: Yes. However, that provision was made specifically to encourage landowners to release land for crofting.

It is a difficult calculation to make but, given the demand for new crofts—there are 900 people on the Crofters Commission's waiting list—we thought that it was important that we create a range of opportunities. The situation is similar to that which pertains when houses are built, in that, in a new development, a range of housing options would be included.

Mr Morrison: John Toal, who is a respected and erudite commentator on crofting matters, gave us a submission that talked about the forfeiture of the individual's right to buy. According to the paper that was sent to us by the Executive, the withdrawal of the right to buy would cause

"long term social and economic harm"

to crofting areas. John Toal pithily comments that, perhaps, that argument applies only within the existing pool of crofts and not to the new crofts that will be created.

Rhona Brankin: There is a balance that must be struck. One of the ways of creating new crofts was through a process that involved taking away the right to buy and creating a range of options whereby people who had a right to buy might take up that option and become owner-occupiers while others might choose to become croft tenants. The key thing is that a range of options is available for people who want to become crofters.

The Convener: We have explored this issue as much as it is humanly possible to do today. It would be helpful if we could get that last piece of information on tenancies by Friday, which is our cut-off date.

I suspend the meeting to allow a changeover of officials.

12:45

Meeting suspended.

12:47

On resuming—

Subordinate Legislation

Scotland Act 1998 (River Tweed) Order 2006 (Draft)

The Convener: Agenda item 5 is the draft Scotland Act 1998 (River Tweed) Order 2006, which is an affirmative instrument. The Parliament must approve the draft order before it can be formally made. A motion in the name of Ross Finnie, the Minister for Environment and Rural Development, invites the committee to recommend to Parliament that the draft instrument be approved. Rhona Brankin, the Deputy Minister for Environment and Rural Development, will move the motion and I welcome her and her officials to the meeting.

The Subordinate Legislation Committee has considered the instrument and had no comment to make. Before we come to the debate on the motion—for which, under parliamentary rules, we may take 90 minutes—we will have a discussion to give members a chance to ask for explanation of details and clarification of technical matters. The officials may participate in the discussion but not in the formal debate once the motion has been moved.

I invite the minister to introduce her officials and to make some opening remarks.

Rhona Brankin: I am accompanied by Manson Wright, David Ford and Patrick Layden from the Scottish Executive who, as the convener has pointed out, will be able to answer any technical questions or questions of detail.

The Scotland Act 1998 (River Tweed) Order 2006 is subject to affirmative procedure in both the United Kingdom Parliament and the Scottish Parliament. As the committee is aware, section 111(1) of the Scotland Act 1998 provides that:

“Her Majesty may by Order in Council make provision for or in connection with the conservation, management and exploitation of salmon, trout, eels and freshwater fish in the Border rivers.”

Those rivers are the River Tweed and the River Esk. It makes sense for salmon and freshwater fisheries legislation to cover an entire river system, irrespective of any border that might bisect the catchment.

After recommendations from the Scottish Law Commission, the salmon and freshwater fisheries legislation in Scotland was consolidated under the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The act covers all of Scotland except the parts of the Tweed and Esk catchments that lie in Scotland.

The lower reaches of the Tweed, and some of its major tributaries, lie in England. Historically, the salmon and freshwater fisheries legislation that is in force for the Tweed, including the parts of it that lie in England—notably the Tweed Fisheries Act 1857 and the Tweed Fisheries Act 1969—has been Scots law. The Scottish Executive Environment and Rural Affairs Department and the River Tweed Council, which is currently charged with the management of fisheries in the River Tweed, agree that a similar situation should be retained. The River Esk catchment area is governed by English law.

The order's objective is to retain what is, in effect, Scottish legislation in relation to salmon and freshwater fisheries conservation, management and exploitation in the River Tweed catchment area. Because the order is not a consolidation exercise, the opportunity has been taken to review the 1857 and 1969 acts to update, amend and—where necessary—repeal certain provisions, to ensure clarity and correspondence with Scots law.

The order restates the current legislative position, although it has been drafted to ensure greater clarity. Changes have been made to the administration of salmon and freshwater fisheries management in the Tweed, including election and operating rules for the River Tweed commission; definitions of the limits of the Tweed district and estuary; methods of fishing, and offences relating to unauthorised fishing; enforcement of legislation; and provisions for making, varying and revoking instruments as necessary.

The order will remove the River Tweed Council as an entity and replace it with the River Tweed commission. Although the commission will be a new body, many of its practices and procedures will simply reflect the existing practices and procedures, which have been operating effectively for more than 30 years. There is therefore no need to detail the procedures in the order.

Nora Radcliffe: Is a similar piece of legislation that says that we can do all this going through Westminster at the same time that we are saying that this is what we are going to do in Westminster's patch?

Rhona Brankin: Yes.

The Convener: As there seem to be no further questions, we will move to the formal debate. Minister, before moving the motion, do you wish to add to what you have already said?

Rhona Brankin: No. I am happy just to move the motion.

I move,

That the Environment and Rural Development Committee recommends that the draft Scotland Act 1998 (River Tweed) Order 2006 be approved.

The Convener: Committee members do not seem to wish to contribute to the debate. I think that we all presume that the order will be welcomed because it sets up a new framework for the management of the River Tweed and enables all the key interests to be involved in the process. I take that to be the broad view of the committee.

I think there is no need to ask the deputy minister whether she wishes to wind up the debate.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Scotland Act 1998 (River Tweed) Order 2006 be approved.

The Convener: I thank the deputy minister and her officials. We now move into private session to continue our discussion on our stage 1 report on the Crofting Reform etc Bill.

12:53

Meeting continued in private until 13:00.

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