ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 15 November 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
32nd 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)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Environment and Rural Development)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 4

Scottish Parliament

Environment and Rural Development Committee

Wednesday 15 November 2006

[THE CONVENER *opened the meeting at 10:02*]

Crofting Reform etc Bill: Stage 2

The Convener (Sarah Boyack): I welcome everyone to the committee, particularly members of the public and the press. First, I ask everyone to switch their mobile phones and BlackBerrys to silent. Secondly, I have received an apology from Nora Radcliffe; she will be slightly late as she is attending another committee meeting first. I welcome John Farquhar Munro, who has joined us for the first agenda item.

Today we begin our stage 2 consideration of the Crofting Reform etc Bill. I welcome Rhona Brankin, the Deputy Minister for Environment and Rural Development, who will steer us through the Executive's perspective at stage 2. I also welcome the officials who are accompanying the minister.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday, and the grouping of amendments, which sets out the amendments in the order in which they will be debated. The running order is set by the rules of precedence that govern the marshalled list. Members should remember to move between the two papers. I will call all amendments in strict order from the marshalled list; we cannot move backwards on the list. I have set the target of reaching the end of section 10 of the bill today; we shall see how we get on.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up. If the deputy minister has not spoken in the debate on the group of amendments, I will invite her to do so just before I move to the winding-up speech.

Only committee members are allowed to vote. After we have debated the amendments, we must decide whether to agree to each section of the bill as a whole; a short debate will be allowed on that, which will be useful to allow discussion, if members want it, of points that were not raised by amendments.

Section 1—The Crofters Commission: constitution etc and general duties

The Convener: Group 1 is on the Crofters Commission. Amendment 8, in the name of the minister, is grouped with amendment 9.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): The proposed changes to the Crofters Commission's constitution proved unpopular with crofting bodies and other interests after the consultation ended. Accordingly, I intend the constitution of the Crofters Commission to remain as it is, as set out in the Crofters (Scotland) Act 1993.

Amendment 8 is required to delete section 1 and to revert to the original provisions in the 1993 act. Amendment 9 is a consequential amendment. We require an amendment to delete schedule 1 and to revert to the original provisions in schedule 1 to the 1993 act.

As the committee is aware, the Executive will establish a committee of inquiry to examine the framework of crofting, including the structure, representation on and accountability of the commission's board, the level at which local policies should operate and how they should feed into the commission's work. Following the inquiry, the Executive will consider that committee's conclusions and report to Parliament on its intentions.

I move amendment 8.

The Convener: I very much welcome the minister's movement on a key point that we identified in our committee report. I welcome the minister's agreement that section 1 should be removed and the ability to debate later the report of the committee of inquiry that you have said you are happy to establish.

Amendment 8 agreed to.

Schedule 1

THE CROFTERS COMMISSION

Amendment 9 moved—[Rhona Brankin]—and agreed to.

Section 2—Particular duties and powers

The Convener: Group 2 is on duties and powers of the Crofters Commission. Amendment 120, in the name of Maureen Macmillan, is grouped with amendments 121 to 128, 10 and 39.

Maureen Macmillan (Highlands and Islands) (Lab): Amendments 120 to 128 reflect the Scottish Crofting Foundation's concerns about section 2, which will substitute a new section 2 into the 1993 act. It is felt that there is much good in the provision and the foundation does not necessarily want the good ideas in it to be lost—particularly those in new section 2(1) of the 1993 act.

However, the foundation wants the removal of new section 2(2)(a) of the 1993 act, which relates to the appointment of a panel of experts. Amendment 120 would remove that paragraph. The foundation also wants the removal of new section 2(3), which relates to the payment of experts. That removal is covered by amendment 121. Amendment 122 is consequential on amendments 120 and 121.

There is strong support for the development of local policies by the Crofters Commission, but amendment 123 would ensure that the development of those local policies was determined by a panel of residents of an area. New section 2A(3)(b) of the 1993 act will enable non-residents to be appointed to local panels to make local policy. The foundation feels that that is inappropriate and that local policy should be decided by local people.

Most important, amendment 124 would ensure that the majority of members of a panel were elected and that a panel included any assessor who was appointed to the area. Amendments 125 to 128 are consequential on amendment 124.

I acknowledge that the minister wants a tabula rasa in respect of section 2, considering the commitment that was given to consult on the issues that I have raised. I trust that the minister will note crofters' wish for an element of election to local panels and their endorsement of the need for flexibility and local decision making.

I move amendment 120.

Rhona Brankin: With amendment 10, I seek to do what the committee asked ministers to do. The amendment would remove section 2 from the bill so that the constitution of the Crofters Commission would remain largely intact pending the outcome of the committee of inquiry. The amendment would also retain the power of specific direction, which is an element of section 2 that seems to be supported by crofting interests. That will enable ministers to give the commission more specific direction about the way in which it performs its duties.

In some respects, amendment 10 is consequential to amendment 8 because section 2 is linked closely to section 1. Maureen Macmillan's amendments would require the retention of section 2, but because of the link with section 1, I do not believe that that is appropriate. I have no reason to argue with Maureen Macmillan's amendments 120 to 122, but their effect would be to remove a provision that would be removed by amendment 10. If the committee is prepared to support amendment 10, amendments 120 to 122—as well as all Maureen Macmillan's other amendments in relation to section 2—are unnecessary. I therefore urge her to withdraw amendment 120 and not to move amendments 121 and 122.

Amendments 123 to 128 are of slightly greater concern. I have no difficulty with the concept of democratically elected local panels. I recognise that there are strong views about that, and the provisions in section 2 would have allowed for that. However, I have some doubts about whether the amendments would deliver the democracy that crofting interests say they want. There is a danger that the amendments would exclude rather than include. They would not give people who have an obvious interest the right to vote, including owner-occupiers, sub-tenants, crofters who happen to live a few miles outside the area of the scheme, representatives of the landlord's interests and would-be crofters. The amendments would also exclude from membership of the panel anyone who did not live in the area covered by the scheme, except the commission-appointed assessor.

As Maureen Macmillan said, we are commissioning a committee of inquiry to consider the range of crofting issues, including the structure and role of the Crofters Commission, and democracy and crofter representation are exactly the kind of issues on which that committee will be expected to make recommendations. I will make it clear in the committee of inquiry's remit that we want it to consider that. In view of that assurance, I ask Maureen Macmillan to not move amendments 123 to 128. If the committee agrees to amendment 10, Maureen Macmillan's amendments in the group will be unnecessary.

Amendment 39 is consequential to amendment 10. I will, of course, not move it if the committee decides to vote against amendment 10.

Rob Gibson (Highlands and Islands) (SNP): I hope that the minister will give us some firm information on when the committee of inquiry will be appointed, what its remit will be and when it will report. A lot of decisions will be predicated on the strength of the committee of inquiry and its ability to get to the roots of the problem, so I ask the minister, in summing up, to give us some help with that.

The Convener: We certainly raised the issue in our report to the Parliament. We said that it was important for such an inquiry to be established urgently.

Elaine Smith (Coatbridge and Chryston) (Lab): Having set up the committee of inquiry, it would be sensible to allow it to do its work.

Mr Alasdair Morrison (Western Isles) (Lab): There should not be any undue haste about the committee's composition. What the Executive is doing regarding crofting is well recognised, but the minister and the Executive should deliberate for an appropriate amount of time. They should not be huckled into a hasty decision about the composition of the committee of inquiry. Its establishment is certainly welcomed by crofters from throughout the crofting counties.

The committee and the inquiry will be important. I urge the minister to deliberate appropriately on the matter.

10:15

Rhona Brankin: I am conscious of the view that the committee took on the committee of inquiry. I hope that the committee of inquiry will be able to report back to the Parliament early in the new session. My intention is to get its membership—certainly the chair—in place within the next couple of months. We are working closely with the Scottish Crofting Foundation, with which I had a meeting to discuss the remit of the inquiry. Names of some potential members have also been suggested. It is important that we get the right people on the committee of inquiry and that it is given a clear remit and asked to do the job as expeditiously as possible. As soon as we have set up the committee of inquiry and established its remit, I will be in touch with the Environment and Rural Development Committee.

Maureen Macmillan: I am pleased to hear the minister's commitment to the committee of inquiry. I am also pleased that she is in agreement with the principles of what the Scottish Crofting Foundation seeks, particularly with regard to local democracy and flexibility for local decisions to be made. I seek leave to withdraw amendment 120 in the light of the reassurances that the minister has given.

Amendment 120, by agreement, withdrawn.

Amendments 121 to 128 not moved.

Amendment 10 moved—[Rhona Brankin]—and agreed to.

After section 2

The Convener: Group 3 is on the duty in respect of town and country planning. Amendment 138, in the name of John Farquhar Munro, is the only amendment in the group.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Thank you, convener; I appreciate the opportunity to come to your committee to make a representation, albeit a small one. I thank the committee for the tremendous work that it has done on the bill. There is now a consensus that we will get a bill that will give satisfaction to many, if not all, in the crofting counties. I thank the committee for that. I hope that those comments will encourage the committee to vote for my amendment.

Amendment 138 is simple. Its purpose is to ensure that the Crofters Commission, which after all is the regulatory body for all issues that affect crofting, is consulted by local authorities when a planning application has been lodged for development on any part of a croft or crofting area. I lodged the amendment in the hope that it can be agreed that the Crofters Commission would be a statutory consultee on all planning applications that affect crofting. That is the purpose of my amendment.

In the bill, the commission has been given wide-ranging powers to ensure that all issues affecting crofting from an agricultural point of view are covered by its remit. However, the bill omits to give the commission statutory responsibility for planning matters. I think that the commission should be at least a statutory consultee on such issues.

The big argument in the crofting townships has been around the fact that planning applications have been approved by a local authority and the Crofters Commission has stated that it has no remit to interfere once an application has been approved. I think that that is wrong. For example, in Taynuilt, in Argyll, planning that was approved by the local authority upset the whole community; yet, the Crofters Commission said that it was unable to intervene at that stage. That should be considered detrimental to crofting.

Amendment 138 calls for

"Duty in respect of town and country planning",

to ensure that whatever development is submitted for approval by a local authority is at least scrutinised by the Crofters Commission before planning permission is even considered. That will allow due consultation with the local crofting community and the regulating body in the area. Whether that be the grazings committee or another committee, representation of the crofting community in the area should be given due consideration by the commission.

I move amendment 138.

Maureen Macmillan: I endorse the principle behind John Farquhar Munro's amendment. It is a significant problem when planning permission is given for crofting land without any consultation with the commission about the appropriateness of

the development. We have discovered that planning permission takes precedence over anything else. It seems that, if the local authority has decided that the land can be built on—for housing or otherwise—there is nothing that the commission can do about it. It is a fait accompli.

Nonetheless, I am not sure whether an amendment to the bill is the right way in which to approach the matter. The Deputy Minister for Communities is considering how the problem could be addressed in the planning system through regulation. Although, regrettably, I have not received a reply to my letter to her, I have had verbal assurances from her on the matter. I would like to wait and see what she suggests before I would support the amendment.

Rob Gibson: The nub of the problem that people face is that a Scottish Land Court judgment has overruled the crofting interest in favour of the acceptance of outline planning. The Scottish Land Court is within the remit of the bill. It seems to me that, although the Deputy Minister for Communities—as she was at the time—gave us some information in the debate on the Planning etc (Scotland) Bill about making the Crofters Commission a statutory consultee, it would strengthen our hand if we agreed to the amendment if it is valid, which I believe that it is. That would underline the fact that the committee believes that there must be an intervention in the situation in which planning seems to take precedence over crofting.

Mr Morrison: My friend John Farquhar Munro has outlined an issue that is greatly exercising people right across the crofting counties. Equally legitimately, Maureen Macmillan has highlighted the role that the Deputy Minister for Communities—as Johann Lamont still is—is playing with respect to the Planning etc (Scotland) Bill. Although I whole-heartedly endorse everything that John Farquhar is promoting, I am minded to follow the position that Maureen Macmillan has outlined, which is for the proposals to be properly articulated and developed in the Planning etc (Scotland) Bill that will be debated in the Parliament at stage 3 today and tomorrow. I am sure that the Deputy Minister for Communities, Johann Lamont, is well capable of dealing with the issue through that bill, and I suspect that she has been doing that in discussion with the Minister for Environment and Rural Development—we will hear about that from Rhona Brankin.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I, too, agree with the broad thrust of what John Farquhar is trying to achieve with amendment 138. I wish to remind the committee of the situation at Taynuilt, however. My recollection is that the planning official who came before the committee said that she had alerted the Crofters Commission to the fact that the proposed development there was to be on crofting land. It was the Crofters Commission that still decided that the land was to be given up. At least the planning advisers drew the matter to the attention of the Crofters Commission in that case.

Overall, the line that Maureen Macmillan and Alasdair Morrison have expounded is probably the right one. We should wait and deal with the matter in a planning context, rather than in the context of the Crofting Reform etc Bill.

Rhona Brankin: In my view, the appropriate, practical role of the Crofters Commission of engaging with planning authorities and grazings committees on whether croft land is important for local crofting agriculture or on the viability of a crofting community is played at the key time when the development plan is in preparation. There has been much discussion previously about the Crofters Commission becoming a statutory consultee. Indeed, I have met the Minister for Communities, Malcolm Chisholm, to discuss the matter. The Deputy Minister for Communities, Johann Lamont, has assured John Farquhar Munro, both publicly and formally, that, when the secondary legislation associated with the Planning etc (Scotland) Bill is considered, the issue of the definition of the Crofters Commission as a key agency will be considered. I am sure that that assurance will be made again in writing. It has already been given verbally.

It is unnecessary, inappropriate and impractical for the Crofters Commission to attempt to keep track of all planning applications that might affect croft land and to consider whether such applications affect the crofting community. That would require the commission to make representations on development that they might subsequently have to consider through a decrofting application once planning consent has been approved. The commission might in effect have to prejudge a potential decrofting application. That would have the effect of giving the commission two opportunities to influence and potentially prevent an individual member of the public from fulfilling their possibly legitimate and reasonable development aspiration. I would argue strongly that the key, strategic time for the Crofters Commission to become engaged is during the preparation of the development plan.

Furthermore, amendment 138 would not result in the Crofters Commission being a statutory consultee, as it would not require the planning authority to do anything. Effectively, it would not make the change that members seek. I ask the committee to reject amendment 138. The issue is best visited through secondary legislation under the Planning etc (Scotland) Bill.

The Convener: Will you ensure that the Deputy

Minister for Communities writes to the committee on the matter?

Rhona Brankin: Absolutely.

The Convener: It is great that Maureen Macmillan has written to the minister on the matter, but I, as a member of the committee, would also like to see the response. Are you prepared to give that commitment, minister?

Rhona Brankin: Yes, I give that commitment. It is important that the committee has sight of that letter before stage 3.

The Convener: I thank the minister for that. I do not know whether John Farquhar Munro would be prepared to withdraw the amendment on that basis. Have you heard enough? You would have the chance to come back at stage 3 if you were unhappy.

10:30

John Farquhar Munro: In view of the commitment that has been given, I am enthused enough to seek to withdraw the amendment. I will wait for further developments through the appropriate planning process.

The Convener: You have heard that the committee is supportive of your point. It was a major issue in our report.

Amendment 138, by agreement, withdrawn.

Section 3 agreed to.

Section 4—Power of the Commission to make schemes and arrangements for grants

The Convener: Group 4 is on grants and expenses. Amendment 11, in the name of the minister, is grouped with amendment 119.

Rhona Brankin: The proposals that are encapsulated in section 4 provide scope for the Crofters Commission to assume responsibility for current grant schemes and to devise its own schemes targeted to priorities and specific local needs in much the same way as the croft entrant scheme targets certain areas.

As there will be no change to the Crofters Commission constitution and it will not be able to meet the financial accountability requirements to make and pay grants, it is appropriate and necessary that the power to make grants is deferred until it has been considered further in the inquiry. In the meantime, the power to make grants will remain with the Scottish Executive Environment and Rural Affairs Department.

I move amendment 11.

Amendment 11 agreed to.

The Convener: We move to section 5.

Mr Morrison: We need to agree section 4.

The Convener: We deleted section 4, so we do not need to agree it. It is unusual for us to delete sections, so it is fine for members to check that we are getting it right. I assure members that the clerks have been over the procedure with a fine-toothed comb, and if I read something out from my script, it should be correct. For clarification: don't panic.

Section 5—Obtaining Commission approval or consent

The Convener: Group 5 is on obtaining commission approval or consent. Amendment 129, in the name of Maureen Macmillan, is grouped with amendments 130 and 12 to 14.

Maureen Macmillan: Amendment 129 would change a "may" to a "must". Section 5 inserts new section 58A, subsection (6) of which provides that the commission must intervene when it receives objections that it does not consider to be frivolous, vexatious or unreasonable. However, it only "may" intervene if any of the general or special conditions are applicable. The Scottish Crofting Foundation would prefer the provision to say that it must intervene in those circumstances.

My amendment 129 would remove the word "may" and replace it with "must". That would place a requirement on the commission to intervene in an application when the general conditions in new section 58A(9) apply. Those general conditions can relate to fairly serious impacts on the estate, crofting community and public, so it was felt that there should be duty on the commission to intervene rather than the choice to do so.

Amendment 130, which would do a little tidying up, would make it clear that new section 58A(9)(a)(iv) refers to the crofting community rather than the community in general.

Executive amendments 12 and 13 deal with the general conditions, and I am interested to see whether guidance will be about the conditions themselves or about how robustly they are applied.

I move amendment 129.

Rhona Brankin: Section 5 inserts new section 58A, which sets down the processes by which the majority of applications to the commission will be determined. The commission will no longer be required to determine every application that is made by crofters and landlords, but it will still have a responsibility to intervene when there is an objection or when an application that raised no objections invokes separate criteria requiring the commission to consider and decide whether the application should succeed.

Section 5 affects applications for apportionment,

assignation, reletting and subdivision. It does not affect decrofting applications, for which there is a separate procedure. All decrofting applications will continue to be scrutinised in detail by the commission whether controversial or not. It is important to say that.

The vast majority of regulatory applications affected by section 5 are not controversial and are not subject to objections. There is therefore little point in subjecting apportionment, assignation, reletting and subdivision applications that are not subject to objections or otherwise likely to cause difficulties in a community to what could be a complex and drawn-out process. Delaying non-controversial applications would needlessly delay transfers and other transactions by crofters that could help keep crofts in active use or return them to it. Delays could lead to risks for the crofting community.

If amendment 129 were to be accepted, there would be little simplification of crofting regulatory bureaucracy achieved by section 5. However, I support amendment 130, which will help to clarify that it is crofting communities that are being referred to.

Amendment 12 empowers the Scottish ministers to issue guidance—especially on how the expression "sustainable development" is to be construed—in the context of the potential adverse effect on the sustainable development of the local crofting community of any proposal for which the approval or consent of the commission is being sought.

Amendments 13 and 14 are tidying-up amendments to ensure that the same terms are used throughout the section. We are using the term "conditions" rather than "criteria".

The Convener: I invite Maureen Macmillan to wind up the discussion and to press or withdraw amendment 129.

Maureen Macmillan: I seek leave to withdraw amendment 129. I want to reflect on what the minister has said and to discuss the matter further with her. If necessary, I can lodge the amendment again at a later date. I am grateful to the minister for accepting amendment 130.

Amendment 129, by agreement, withdrawn.

Amendment 130 moved—[Maureen Macmillan]—and agreed to.

Amendments 12 to 14 moved—[Rhona Brankin]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Obtaining of information by Commission

The Convener: Group 6 is on maps and charges. Amendment 1, in the name of Maureen Macmillan, is grouped with amendments 15, 2 and 3.

Maureen Macmillan: Amendments 1, 2 and 3 address the issue of compiling maps of crofts, which has been contentious. The committee thought that providing maps for inclusion in the register of crofts was long overdue, but that the Crofters Commission rather than crofters should shoulder the burden of doing so. The amendments would delete references to the requirement to provide maps to the commission.

Shall I speak to amendment 15 now, convener?

The Convener: You are responsible for moving amendment 1, but you can speak to any amendment in the group. Amendments 15, 2 and 3 are the other amendments in the group.

Maureen Macmillan: I beg your pardon. I am in a mess here.

The Convener: Amendments 1, 15, 2 and 3 are grouped together for the purposes of the debate. You may speak to all of them if you want to do so.

Maureen Macmillan: Okay.

I am happy to support Executive amendment 15, which will delete the reference to payment of a fee for requesting an extract from the register. I hope that I have not misread the amendment—I seem to have misread other things.

Basically, my amendments would delete all references to maps and to crofters having to provide maps to the commission. We think that things should be done the other way round.

I thank the convener for her patience.

I move amendment 1.

Rhona Brankin: The proposals that would have involved the Crofters Commission requiring crofters to incur charges proved unpopular during the consultation period and with the parliamentary committee, as has been noted. Accordingly, I agree that the constitution of the Crofters Commission should remain as it is, as set out under the Crofters (Scotland) Act 1993, and support Maureen Macmillan's amendments.

Amendment 15 is consequential on amendment 2, which will leave out section 8. The amendment will remove the reference to one of the new sections of the 1993 act that section 8 would have inserted, in connection with fees chargeable for searching the register of crofts, and will give a person an entitlement to receive a copy or extract from the register of crofts without having to pay a

fee for it. We lodged the amendment because our proposals that involved crofters incurring charges proved unpopular with the committee and crofting interests.

As the committee is aware, the Executive is setting up a committee of inquiry to examine the whole framework of crofting, including the structure and accountability of and representation on the board of the Crofters Commission, the level at which local policies should operate and how those policies should feed into the commission's work. The commission's role in managing the register of crofts will form part of the inquiry. Following the inquiry, the Executive will consider the committee's conclusions and report back to Parliament on its intentions.

The Convener: No other member wants to speak to the group. Therefore, I think that we can take it that there is general enthusiasm for the amendments.

Maureen Macmillan: I am pleased that the Executive supports amendment 1, which relates to an important part of the bill that crofters did not want. I am glad to see the back of it.

Amendment 1 agreed to.

Section 6, as amended, agreed to.

Section 7—Maintenance of and provision of information from the Register of Crofts

Amendment 15 moved—[Rhona Brankin]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Maps and scheme of charges

Amendment 2 moved—[Maureen Macmillan]—and agreed to.

Section 9—Grants to Commission by the Scottish Ministers

10:45

The Convener: Group 7 is on grants to the commission by Scottish ministers. Amendment 16, in the name of the minister, is the only amendment in the group.

Rhona Brankin: The changes that were proposed to the constitution of the Crofters Commission proved unpopular during the consultation period and, after the consultation had ended, in discussion with crofting bodies and other interests. Accordingly, I intend that the constitution of the Crofters Commission should remain as it is, as set out in the Crofters (Scotland) Act 1993.

Amendment 16 is required to delete section 9 and to revert to the original provisions in the 1993 act. As modern non-departmental public body status is not to be conferred on the Crofters Commission at this time, it is no longer necessary to have a legislative power in the bill for Scottish ministers to be able to make grants to the commission. Amendment 16 removes that provision.

I move amendment 16.

Amendment 16 agreed to.

Section 10—New crofts

The Convener: Group 8 is on the creation of new crofts; this is where things begin to get slightly more complex. Amendment 131, in the name of Ted Brocklebank, is grouped with amendments 132, 133, 139, 17 to 19, 134, 20, 21, 135 to 137, 22, 5, 140, 6, 141 and 7. If amendment 132 is agreed to, I will not be able to call amendments 133, 139, 17, 18 and 19, due to pre-emption. If amendment 133 is agreed to, I will not be able to call amendment 139, again due to pre-emption. If amendment 137 is agreed to, I will not be able to call amendments 22, 5, 140, 6, 141 and 7, again on the ground of pre-emption.

Mr Brocklebank: I will be extremely grateful if you can guide me through this, to the best of your abilities.

Amendment 131 is intended as a probing amendment. I say, first of all, that I have no objection, in principle, to the creation of new crofts, particularly in the existing crofting counties. I understand that a number of smallholders, in Lewis and elsewhere, are already seeking crofting status, and I have absolutely no objection to that. However, I have some concerns about establishing new crofts outwith the crofting counties, on three counts.

First, it seems to me that existing legislation covering smallholders might well be adequate to suit their purpose; they might not require crofting legislation to satisfy them.

Secondly, I understand from the evidence that has been led that the only way in which new crofts could be set up outwith the crofting counties would be if existing landowners were happy to make that land available. No doubt the minister will correct me if I am wrong about that. I think that that would be unlikely to happen if the right to buy were applied, so what we are looking at is the possibility of there being two tiers of crofters—the traditional crofters with the right to buy, and newly established crofters without that right to buy—and I fear that a two-tier system of that kind would lead to all kinds of problems.

My third reservation relates to the financial implications of setting up new crofts. From what I have been able to establish, there are no plans to

increase substantially the global sum that will go towards crofting and crofters, so there is a real fear that any extension of the crofting areas, or the setting up of new crofts outwith the crofting counties, could have adverse effects on existing crofters.

Those are my concerns. As I said, amendment 131 is a probing amendment, and I look forward to hearing what the minister has to say.

I move amendment 131.

Rob Gibson: In my view, the discussion about how crofts might be set up—whether within or outwith the crofting counties—ought to reflect the view that if people wish to be deemed to be crofters, we should make it possible for that to happen, provided that it would be a sensible move that would give people stability or would enhance the possibility of their having a body of law that could protect them.

Amendment 133 is an attempt to remove the conditions in the bill that would prevent crofts from being created in a number of different parts of the country. I want to test whether it is possible for the bill to cover all small landholders who are covered by the Small Landholders (Scotland) Act 1911. My reason for doing so is that there was imprecision in the discussions about the land reform legislation. We have identified that there are small landholders in various parts of Scotland. It so happens that in our discussions we have focused on the small landholders on Arran, who have been vocal. I was not happy when I saw the minister's response to the committee's stage 1 report, in which it was stated that the size limit for a croft that is proposed in the bill would exclude "very few" small landholdings. The extent of the exclusion relates both to where the landholdings are and to their size.

First, my series of amendments seeks to set a parameter, in that it would give the ministers a clear remit to create new crofts if there was a demand, provided that we were dealing with small landholders. Secondly, it seeks to address the issue of size. When small landholdings were set up, they were about the same size as crofts. The minister described the figure of 30 hectares as being based on "the normal expectation" of the size of a croft, but he knows that because of the acceptance of amalgamations by the Crofters Commission, there are far larger crofts in other parts of Scotland.

It seems to me that the bill could help to solve the problem of small landholders being excluded from protection under the landlord and tenant law by allowing the small landholdings that exist under the 1911 act to be taken into crofting, if the tenants so wish. It would have to be accepted that some of those small landholdings have been amalgamated, but that is not a good reason for excluding the landholders in question from becoming crofters, if they so wish.

In his commentary on the committee's stage 1 report, the minister said that setting a higher size limit for crofts

"would create a new and even more arbitrary cut off",

but I cannot accept that many people would be affected. For the bill to be inclusive, it is important that small-landholder tenure is dealt with once and for all. It is essential to recognise that there are small landholders who have not been identified fully in other parts of the country. My series of amendments would not only allow them to be taken on board as they are identified, but would—especially amendment 6—allow the minister to determine the size and location of small landholdings that would be accepted as crofts. I believe that the minister will want to try to solve once and for all a problem that was left hanging in the air by the Agricultural Holdings (Scotland) Act 2003, even though it was raised during that act's passage.

When we considered the problem of the Arran small landholders, the committee took a tour of the south of Arran and saw both owner-occupied and tenanted holdings. It was clear that the tenants were not able to make the kind of developments that they wanted to make to be as prosperous and contributory to the local economy as possible. The amendments would help those people and would tidy up the problem of small landholders in other parts of Scotland.

Nora Radcliffe (Gordon) (LD): Amendment 139 was prompted by nervousness in the agricultural rented sector, which is only just beginning to settle down three years after the Agricultural Holdings (Scotland) Act 2003. A stated intention of the bill is to enable small landholders who feel that historically they missed out on crofting status to convert their land into crofts. Amendment 139 would restrict that ability to small landholdings on Arran only.

The bill is currently widely worded to allow small landholders in any area of Scotland to apply for crofting status with no requirement on the tenant to contract out of the absolute right to buy. All those involved in the general agricultural let-land sector are genuinely concerned that the current wording will destabilise the already fragile confidence of landowners about making land available for letting. Even if other areas are not designated immediately, the possibility of that happening in the future could be damaging.

The idea of restricting to Arran the ability to convert to a croft was arrived at by consensus by a number of bodies involved in agriculture. I want to probe with the minister the possibility of tackling

the nervousness that exists in another way by making it a condition on people who voluntarily convert to crofting tenure to waive the absolute right to buy, which makes people most nervous. That would give small landholders all the benefits of crofting tenure without the absolute right to buy, which is seen as a double-edged sword even in the crofting counties. If the absolute right to buy were not available to people who converted to crofts voluntarily, it would remove the nervousness from the agricultural rented sector.

Amendment 140 is intended to ensure that croft-like landholdings are included and amendment 141 seeks to ensure that consultation is carried out before anything is done.

Rhona Brankin: Amendment 131 would ensure that new crofts could not be created and that holdings that comply with the general conditions in subsection (11) of the new section 3A that section 10 inserts into the Crofters (Scotland) Act 1993 could not be constituted as crofts outwith the crofting counties. The committee is aware that the provisions were developed to meet the strong interest on Arran in converting small landholdings to crofts. There has also been interest in various remote parts of Scotland in creating new crofts as a means of securing rural development. I know that evidence on that point was submitted to the committee.

I clarify for Ted Brocklebank and Nora Radcliffe that small landholders who become crofters will have the right to buy in the same way as other crofters currently do. Although landowners might prefer the provisions to be dropped, small landholders and other people in remote, rural communities are eager for such provisions to be made available.

Amendment 133 would allow tenants of holdings that meet the general conditions in new section 3A(11) to apply to have their holdings constituted as crofts without ministers first designating by order the area as one in which holdings can be constituted as crofts. The provisions that require ministers to make an order to designate areas in which new crofts can be created or holdings converted to crofts also require that a draft of the Scottish statutory instrument be laid before and approved by Parliament. That approach will allow for careful consideration, community consultation and, ultimately, a decision by Parliament on the proposed order. We seek to avoid piecemeal conversion of holdings to crofts without consideration by the communities within which such change is expected. That is important.

11:00

Amendment 139 would prevent holdings, as defined in new section 3A(11) of the 1993 act, other than holdings on Arran, from being constituted as crofts. As I said, holdings exist elsewhere in Scotland, albeit small numbers of them, the tenants of which may wish to benefit from the opportunity to convert their holding to a croft. During stage 1, the committee acknowledged that there are holdings outwith Arran that must be considered. In making provisions to allow relevant holdings anywhere in Scotland to be converted to crofts, the Executive seeks to ensure equity throughout rural Scotland.

Under amendment 17, the Crofters Commission's power to constitute a holding as a croft will be subject to the additional requirements of proposed new subsection (2A) that amendment 18 will insert in new section 3A of the 1993 act, which will require tenants first to obtain a certificate from the Scottish Land Court. I will explain why I propose that change. The Land Court has expressed concern that new section 3A(4) in the 1993 act gives the impression that the commission will simply tell the Land Court that there has been an application and then leave it to the Land Court to carry out investigations. Amendment 18 will add an administrative stage that the tenant of a holding will be required to complete before applying to the commission. The tenant will first have to obtain from the court a certificate of his existing status under new section 3A(2) in the 1993 act before approaching the commission, when he will be asked to exhibit a copy. The commission will then make a determination on the application, as already provided for in the bill.

Amendment 19 will clarify what must happen and the issues on which the commission must be satisfied before it can make an entry in the register of crofts following the constitution of a holding as a croft. Amendment 20, which will delete new section 3A(4)(b) in the 1993 act, is consequential on amendment 18, which will insert new subsection (2A) in new section 3A of that act, to make explicit the role of the Land Court in the process. Amendment 21 is also consequential on amendment 18. Amendment 22, which will delete paragraphs (a) and (b) of new section 3A(11) in the 1993 act, is also consequential on amendment 18.

Amendment 140 would make it impossible to constitute as crofts holdings as defined under new section 3A(11) in the 1993 act if the rent of those holdings exceeded £50. It is unlikely that many holdings attract a rent less than £50, which means that few holdings would be capable of conversion to crofts. Therefore, I ask the committee to resist amendment 140.

I turn to Rob Gibson's amendment 6. In our response to the committee's stage 1 report, we said that the limit of 30 hectares was as good an

arbitrary figure as any other, because a higher figure, or scope to relax the figure, would risk encouraging some substantial holdings to seek to become crofts, which could be a concern. However, an argument might be made for the intent behind amendment 6 so, if Rob Gibson is content not to move amendment 6, I will consider whether we can address the underlying issue before stage 3.

Amendment 141 would delay the making of orders to allow tenants of holdings as defined in new section 3A(11) in the 1993 act to apply to convert their holdings to crofts until consultations with affected people have taken place. In addition, ministers would have to establish and explain the public interest that the order served. If Parliament approves the provisions in the bill to allow the conversion of holdings, it will have determined that, in principle, the conversion of holdings is in the public interest. New section 3A(12) in the 1993 act makes provision for a draft order to be laid before Parliament and approved by resolution, which will allow further testing of the public interest in particular cases. My position is that there is no need for further tests and constraints on the making and confirming of the order.

Amendment 7 would create procedures by which individuals or groups may make representations requesting that an order be made to designate land on which new crofts can be created outwith the crofting counties.

Ordinarily, Parliament gives powers to ministers who then decide how and when to use them; that approach allows representations to be made to ministers by any person at any time without the need for regulation and further bureaucracy. Creating a formal process to regulate representations could mean that reasonable representations that did not comply with the formal process would not be considered, which could be a constraint.

The Executive has not lodged an amendment to enable secondary legislation to set out guidance about designating areas for new crofts outwith the crofting counties. The intention is that guidance will be developed with stakeholders and published thereafter. That will be more effective if it is an administrative process carried out by ministers or the commission. Key to that is the fact that guidance will be developed with stakeholders.

I urge members to resist all amendments in the group, other than amendments 17 to 22.

Mr Morrison: Ted Brocklebank made a number of not unreasonable points in speaking to his amendment 131, which is a probing amendment. I will take the opportunity that Mr Brocklebank has afforded me to reissue my plea to the minister and her hitherto moribund officials—I am not being uncharitable in saying that—to acknowledge that within the crofting counties there are communities that seek to be recognised as crofters, which are known affectionately as fishermen's holdings. I know that the minister is aware of the pleas that I have made on behalf of the people who live in fishermen's holdings in Sgiogarstaigh in Ness and Eagleton in Point, Lewis. The minister was absolutely correct to acknowledge that we must pay proper attention to those in the existing crofting counties before we examine the possibility of creating crofts outwith them. I reissue my plea to acknowledge those who live in fishermen's holdings and give them the status that they deserve.

Eleanor Scott (Highlands and Islands) (Green): I urge members to vote against any amendments that would restrict the creation of new crofts outwith the crofting counties. There were many criticisms of the bill at stage 1, but one of the most attractive things about it—or one of the reasons why we did not want to get rid of it in its entirety—is that it offers the exciting possibility of creating new crofts. I refer in particular to forest crofts, which are dear to my heart and to the heart of the Executive, which has adopted their creation as part of its forestry strategy and has formed a working group on them. I know that the Executive is committed to forest crofts, but a large part of the forest estate is outwith the crofting counties. At stage 1, we heard evidence that people in Dumfries and Galloway are quite excited about embracing the possibility of forest crofts, which I think have a lot to offer. We should vote to make it possible to create new crofts throughout Scotland, rather than just in the crofting counties. It is good that the amendments have been lodged, because there are funding issues that need to be debated. However, we should not lose sight of the exciting possibility of creating new crofts.

Richard Lochhead (Moray) (SNP): Generally I support what Eleanor Scott has said about retaining the possibility of creating crofts outwith the crofting counties. Will the committee of inquiry be considering that, where there is a demand for it?

Nora Radcliffe: I take on board the minister's comments establishing the public interest. However, I would like an assurance from her that we may have more discussion on how to allay nervousness in the agricultural let sector about the potential of the bill to destabilise the fragile confidence that has been re-established. I concur with Eleanor Scott's comments that there are exciting opportunities to extend crofting tenure outwith the crofting counties and I know that people in my own area are interested in pursuing that option, but I am aware of how long it has taken for the rented sector to settle down after the Agricultural Holdings (Scotland) Act 2003. I would

like an assurance that we will be able to discuss the issue in the context of the bill and perhaps also outside that.

The Convener: When I call your amendments, Nora, I will not let you say much at all.

Nora Radcliffe: That is why I am saying it now.

The Convener: It is my intention to let everyone who has amendments in the group comment on what they have heard. Does the minister want to respond to anything specific?

Rhona Brankin: Yes, a couple of things. First, it is not the intention that the committee of inquiry will consider the issue, because my understanding is that there has been strong support—including from the Environment and Rural Development Committee—for the creation of new crofts. In seeking to reassure Nora Radcliffe, I say that although small landholders who become crofters will have the right to buy, in broader terms a community that wants to create new crofts will have an opportunity to say, "We want to create new crofts, but we want to waive the right to buy." Those taking up the new crofts will then be expected to waive the right to buy.

It is not the case that there will be an automatic right to buy when all new crofts are created. It is important to keep that flexibility so that we can respond to community bodies that have expressed concern about the matter. However, the fundamental policy imperative is to create as many new crofts as possible. We know that 900 people are on the Crofters Commission waiting list. The key driver behind the policy is to create as many new crofts as possible in a relatively short space of time. We know that there is a demand for that.

Mr Brocklebank: As I said when I moved my amendment, in principle I have no objection to the creation of new crofts. As the minister has explained, a great number of people are waiting to take up crofting tenancies. However, I still believe that there is confusion over this aspect of the bill. I was there on Arran and was sympathetic towards the views of the tenants we met. I recognise the hard work that they have put into their farms. However, we must also be aware that a number of tenants on Arran do not believe that this is a sensible way to proceed. I also understand that NFU Scotland is, to say the least, ambivalent about creating new crofts outside the crofting counties.

It is still not clear how the land will be obtained if the right to buy provisions still apply. In the light of what the minister has said, I still have concerns that there might end up being a two-tier system of those with the right to buy and those without it. Neither did the minister give any assurances on the extra funding that might be available to set up new crofts outwith the crofting counties.

Having said all that, I would like to take the opportunity to consider the minister's proposals at stage 3 and will reserve my position until then. I seek to withdraw my amendment at this stage.

Amendment 131, by agreement, withdrawn.

Amendment 132 not moved.

11:15

The Convener: Amendment 133, in the name of Rob Gibson, was debated with amendment 131.

Rob Gibson: I am content from what the minister has said that the potential for new crofts in other parts of the country will be dealt with by the bill.

Amendments 133 and 139 not moved.

Amendment 17 to 19 moved—[Rhona Brankin]—and agreed to.

Amendment 134 not moved.

Amendments 20 and 21 moved—[Rhona Brankin]—and agreed to.

Amendments 135 and 136 not moved.

The Convener: Group 9 is on new crofts: guidance on prospective tenants. Amendment 4, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: There has been some discussion about there being two tiers of crofter. There are those who are tenants and those who are owner-occupiers. There are also those who have the right to buy and those who are restricted in certain estates from having the right to buy. However, there is also more than one kind of landlord. There is the private crofting landowner of the past, but there are also the new community landowners. It is important that we recognise the difference between the two.

Amendment 4 is intended to ensure that the new community landlords can play a part in discussions about the selection of tenants. In new community buy-outs, such as the one that is imminent on South Uist, which will be the biggest community buy-out so far, it is possible for the community landlord to bring about developments that will enhance the interests of the whole community. It is important that community landlords are given the chance to have a say. Amendment 4 attempts to ensure recognition that community landlords have a new role to play and that they should be involved in the process. I will keep it as simple as that because I believe that amendment 4 opens up possibilities, rather than shutting them down.

I move amendment 4.

Rhona Brankin: Contrary to what Rob Gibson

said, amendment 4 limits the room for discretion on who might become the tenant of a new croft. If adopted, the approach that it proposes could prove counter-productive. Whoever becomes the tenant of a new croft will have to comply with the statutory conditions and all other aspects of crofting law.

Any landlord seeking a tenant for a new croft will wish to ensure that would-be tenants understand what will be expected of them and are likely to comply with those obligations as crofters. The danger is that adding a further set of criteria would complicate and confuse the letting of new crofts. I do not want to put any unnecessary barriers in the way of creating new crofts. The policy intention is clear—we want to be able to create new crofts without any unnecessary barriers. I ask the committee to resist the amendment.

Rob Gibson: The minister has said that amendment 4 confuses and increases the bureaucracy that is involved in creating new crofts. In my view, we need to think ahead about how the new landlords will operate and to recognise the ways in which they differ from other landlords. I am sorry that the minister has taken a negative view of the amendment. I will press amendment 4, because I believe that it is important that there is an opportunity to examine the way in which tenants are selected and to recognise that prospective tenants should fit in best with the wishes of the general community, especially where that community consists of other crofters.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. I invite members to indicate whether they are in favour of amendment 4.

Mr Morrison: All the fascists.

FOR

Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (Moray) (SNP)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Elaine Smith (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 4 disagreed to.

Amendment 137 not moved.

Amendment 22 moved—[Rhona Brankin]—and agreed to.

The Convener: Amendment 5, in the name of Rob Gibson, was debated with amendment 131. Does Rob Gibson wish to move the amendment?

Rob Gibson: I will not move the amendment. I am happy that the minister has taken on board the thrust of my arguments and look forward to seeing her response at stage 3.

Amendments 5, 140, 6, 141 and 7 not moved.

Section 10, as amended, agreed to.

Rob Gibson: On a point of order, convener. I am unhappy about the unseemly language that was used during the vote that took place a little earlier. The word “fascists” was applied by a member of the committee to those who supported amendment 4. I do not think that that kind of language, which could be heard from this side of the table, helps us one bit. It demeans the committee, as we are expected to have a proper debate on the bill. I urge you to try to restrain members who use such language and call for the remark to be withdrawn.

The Convener: I am trying to listen intently to what is said, and it helps if members do not talk across one another. I did not hear the comment to which Rob Gibson refers. His point has been made on the record and will appear in the *Official Report*. I would like to move on.

We have made excellent progress today. The rest of the marshalled list is beyond the point at which we agreed to stop, so we have completed today’s stage 2 proceedings. The target that I have set for next week is for us to reach the end of section 34. We may not manage that; if we do not, we will begin day 3 at the point at which we leave off next week. Amendments to sections 11 to 34 should be lodged by 12 noon this Friday, which is 17 November. My aim is for us to complete stage 2 proceedings on the bill by the end of day 3, which is 29 November. I thank the deputy minister and her officials for their attendance. There will now be a short suspension to allow them to leave.

11:25

Meeting suspended.

11:30

On resuming—

European Issues

The Convener: Item 2 on our agenda is European issues. We will consider the latest of my regular reports on European Union developments that are relevant to this committee.

The paper gives members an overview of recent activity in various issues relating to the environment, fisheries and aquaculture. Some of those issues are under development in the EU, while others are at the stage of being implemented in Scotland. I hope that the paper will help to inform people outwith the committee who are interested in the work that is coming up.

The paper lists the Executive's priorities for 2006 and highlights particular developments. Details are given on two issues on which we have agreed to hear evidence from the Minister for Environment and Rural Development on 6 December. Those issues are the rural development programme and the December fisheries council negotiations.

As colleagues know, issues relating to the rural development programme are developing all the time. I intend us to hear the up-to-date position from the minister on 6 December. Also, because that meeting takes place two weeks before the December fisheries council, we will be able to engage with the minister at a key point in the process.

Colleagues are invited to consider the paper and to highlight any issues on which they wish more information. We can request further information from the minister on any such issues before he comes to the committee on 6 December. There will obviously be other issues that we want to ask him about directly.

Some of the issues that are identified in my report are the European fisheries fund and simplification of the common fisheries policy; bio-energy and the biofuel strategy; the registration, evaluation and authorisation of chemicals regulation; the LIFE + environment funding programmes for 2007 to 2013; and the environmental liability directive.

There is a range of thematic strategies under the sixth action programme. They include strategies on soil protection, air pollution and the marine environment. We recently launched our own inquiry into the marine environment, and the European and External Relations Committee will hold a conference on 4 December to which we have all been invited.

A further thematic strategy is on the prevention and recycling of waste. That might give us greater regulatory certainty on waste legislation, an issue that the committee has raised on several occasions.

I do not know what issues colleagues would like us to follow up on, but I wanted to put those issues formally on our agenda.

Mr Brocklebank: It is good that it is on the record that those issues are on the agenda. We are getting to the time of year for negotiations with the Norwegians and for the end-of-year summit on fisheries.

The report says that nephrops, haddock and pelagic stocks are all in reasonable condition. Cod stocks are still thought to be outside safe biological limits; they show no appreciable sign of recovery. We have heard scare stories from the International Council for the Exploration of the Sea and from various think tanks about the possibility of a total ban on cod fishing. I want it on the record that there is extreme concern in fishing communities that cod continues to be regarded as some kind of iconic species.

Obviously, it is extremely important that we try to retain cod in our waters. However, the hard fact is that six years have gone by since the cod recovery plan was instituted but we are seeing little or no signs of the recovery of cod. For 15 years, there have been few or no cod off the east coast of Canada, despite all attempts there to preserve stock and have cod return. To many fishermen and an increasing body of scientists, it appears that the reason why cod are not there is much more related to climate than to overfishing.

I urge the minister, in his discussions towards the end of the year, to acknowledge that some people's lives are wholly dependent on the white-fish fishery. There has been a tremendous reduction in the size of the fleet and a number of jobs have gone in our communities around the coast. We cannot continue to threaten our fishermen—and a threat is what it amounts to—with a scare about one particular species. The minister has to acknowledge that.

The only other thing that I would like to add is that, when the minister goes to Brussels at the end of the year, he should be extremely careful to resist further attempts to increase the mesh size for the nephrops fishery. Nephrops have recovered. The nephrops fishery is progressing and has done well this year, but there is extreme fear that that will be undermined if we give in to a further increase in the mesh size for nets for the nephrop fishery. The matter is mentioned in the committee's briefing paper as one of the technical conservation measures in the action plan on the simplification of the common fisheries policy regulations.

I hope that the minister will take those points with him to the Brussels summit at the end of the year.

Richard Lochhead: On a related theme, one of the biggest threats at this year's talks will be the extent to which the Commission wants to involve the prawn fishery to a greater extent in the cod recovery plan, on the assumption that there is a cod by-catch in the prawn fishery. We are told by the minister that that is not the case any more, but that is the number 1 danger at the talks this year.

The other main issue that I want to raise is the fact that the Commission may try to reinforce the cod recovery plan, albeit that it accepts that the plan is not working and wants to review it. That is an ironic situation that seems to arise often with the Commission.

One further issue concerns the rural development budget and the current debate over modulation. The minister recently told the committee that it is his policy that Scotland should have the right to determine its own level of modulation. That view is supported by the agricultural sector, and I think that it is the most sensible way forward. However, it is a complex subject and I would be grateful if the clerks could produce a separate briefing for us on the modulation debate, the impact that modulation would have and the various scenarios that could come out of it. That would help the committee to ask appropriate questions of the minister.

The Convener: Mark Brough tells me that the clerks could produce a paper on that in time for our meeting on 6 December. That would be helpful.

Mr Morrison: I have an issue to raise on the internal EU fisheries negotiations. I know that the minister fully appreciates the significance of the recently constituted inshore fisheries group in the Western Isles. The group is ferociously conservation minded and is to be applauded for what it is setting out to do, especially in relation to the scallop fishery around the Western Isles. There was an unfortunate episode in the committee some years ago, when people who portrayed themselves as friends of the fishing communities willingly betrayed the interests of those communities. It is refreshing that the inshore fisheries group in the Western Isles is setting about protecting the scallop fishery.

If it is possible, I would like the clerks to ask the minister to furnish us with an update on where negotiations and discussions at the European level have reached with regard to the inshore fisheries group. The conservation measures that have been proposed and that are being implemented by Western Isles fishermen are to be whole-heartedly applauded, but they should be set in the proper Europe-wide context. I would appreciate it if a response from the minister on that could be brought to the committee, if that is possible.

The Convener: Okay. That matter can be raised as well.

I have two issues to raise with the minister. Does anyone have any further issues on fisheries or rural development?

Maureen Macmillan: I would like to get some clarification about what is happening with the less favoured area support scheme and where the money is coming from.

The Convener: We would like to have that formally reported to the committee and to be informed of where the money is coming from.

Eleanor Scott: I have a brief comment on fishing that follows on from what Ted Brocklebank said. A lot of sacrifices have been made by the industry, and we do not want to throw away any gains that have been made. I recognise that the issues surrounding the cod recovery plan are complex, but I would hate to write off a species without being sure that we had given the recovery plan, which people have made sacrifices to implement, enough time to kick in.

I would also be interested to know whether the UK still draws down as much money as it has done historically from what used to be the financial instrument for fisheries guidance—I do not know what it is called now.

Maureen Macmillan: The European fisheries fund.

Eleanor Scott: I would like to know whether Scotland has received its full entitlement under the European fisheries fund.

I am interested in paragraph 2 of the convener's briefing, under the heading of "Agriculture and Rural Development". It states:

> "There is also a requirement to allocate 5% of total spending to local rural development projects administered by local partnerships (the LEADER approach)."

It is a while since I looked at a rural development consultation document, but it is not clear to me whether that is still going to be the case. I wonder how that is being taken forward, whether it is still under the umbrella of SEERAD and whether SEERAD is the right body to look at local projects that are community driven.

Those are my two points on fisheries and rural development. I have one or two other points on other things.

The Convener: Okay. Thank you. I have two issues that I want to put on the agenda for our meeting with the minister on 6 December. I would

like a bit more information about the EU's LIFE programme and its implications for the Natura 2000 sites. The briefing paper contains a comment about the potential for competition for those sites because there is less money available. I would like to know the implications of that. I presume that they are special areas of conservation and special areas of protection. I would like to know which sites will be impacted on and whether that will create any deterioration in the quality of those sites or their management.

My second point touches on a concern that I have. I note that the environmental liability directive must be implemented in Scots law by the end of April 2007 and that there will need to be consultation on it before the minister produces a statutory instrument. I am concerned about the timescale. The normal Executive consultation process contains very little time for turning round the consultation and submitting a statutory instrument. It is suggested that a consultation document will be issued before Christmas, but I would encourage the minister to have it issued as soon as possible, preferably by our committee meeting on 6 December. That would certainly aid public awareness about the directive. It is an important issue as well as a phenomenally complex one, so it would be good to get the consultation out to the public as soon as possible.

Rob Gibson: I wonder whether we can clarify with the minister, when he comes to the committee, the aspects of the environmental liability directive that relate to the issue of genetically modified crops. There is an issue to do with potential consultation on separation distances between GM crops and conventional or organic crops, which seems to be in abeyance at present. It would be helpful to know whether that issue will be included in the consultation.

The Convener: We can get an update on that. That would be helpful.

I have one other issue to mention to colleagues. I have received a letter from Linda Fabiani, the convener of the European and External Relations Committee, which is about to consult key stakeholders on policy initiatives in the European Commission's legislative work programme for 2007. The letter notes that that work programme is likely to have a significant impact in Scotland and says that the European and External Relations Committee would like to open up the process to the Parliament's subject committees. I intend to write back informing Linda Fabiani that we receive regular updates from the minister on the EU's forthcoming programme—including the programme for 2007 under the German presidency—as well as regular updates on a quarterly basis at which we track all the key issues, as we have done today. I will write to Linda Fabiani with that information.

I think that our committee is slightly unusual in that, because European legislation on fisheries, the environment, agriculture and rural development is so important to our work, we track it on a regular basis. However, it would be worth while to make the European and External Relations Committee aware that we have certain key issues on our agenda, so that we do not overlap in our work or miss out any issues.

I thank colleagues for that discussion, which is now in the *Official Report*. I hope that interest groups in all the key stakeholder areas that we have discussed this morning will be aware of the issues that we are particularly keen to follow up with the minister when he comes before the committee on 6 December.

Subordinate Legislation

Environmental Protection Act 1990: Code of Practice on Litter and Refuse (Scotland) Act 2006 (SE/2006/164)

11:44

The Convener: Items 3 and 4 are subordinate legislation. Strictly speaking, the code of practice is not subordinate legislation, but it is subject to annulment in similar terms to the process for negative instruments. The Subordinate Legislation Committee has considered the code and has no comments to make. Do colleagues have any comments?

Members: No.

The Convener: Okay. Are we therefore content with the code and happy to make no recommendation to the Parliament?

Members *indicated agreement*.

Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006 (SSI 2006/530)

The Convener: The Subordinate Legislation Committee has made no comments on this negative instrument.

I think that we should welcome the regulations. They are structured in such a way that there are broad principles set out at the start and also a number of schedules that I understand will make it easy for the Executive to perform updates on particular issues in the schedules rather than having to amend small bits of the legislation. Hopefully, the fact that everything has been brought together in the regulations will be helpful to users.

Eleanor Scott: I agree with you about the layout, convener. Despite the size of the regulations, they are easy to follow. They are important and I am interested in the effects that they might have on small, rural abattoirs that might struggle to comply with them. I would have welcomed the chance to question the minister in that regard. I am never quite sure how the decision is made about whether an instrument will follow the negative or the positive procedure but, given that the issue is quite complex, I think that it is unfortunate that we will not have a chance to question the minister.

The Convener: It is entirely possible to put the matter on our agenda for next week. Would you be happy if the committee were to receive a written comment from the minister on the issue that you raise?

Eleanor Scott: Yes. I just want to see whether the question whether the small rural abattoirs will be able to comply with the regulations without too much difficulty has been considered.

The Convener: Okay. Do members agree to ask the minister to write to us on that matter before the next meeting and to discuss the response at that meeting?

Members *indicated agreement.*

Eleanor Scott: Sorry about that, colleagues.

The Convener: No; the reason why we are being consulted is so that we can raise those kinds of issues.

As we agreed at our meeting on 1 November, we will move into private session to discuss our report to the Finance Committee on the 2007-08 budget process.

11:47

Meeting continued in private until 11:57.

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