ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 22 November 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
33rd 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 6

Scottish Parliament

Environment and Rural Development Committee

Wednesday 22 November 2006

[THE CONVENER *opened the meeting at 10:05*]

Point of Order

The Convener (Sarah Boyack): I call the meeting to order and welcome members.

Rob Gibson (Highlands and Islands) (SNP): On a point of order in relation to the *Official Report* of our previous meeting and further to the point of order that I raised when the words "All the fascists" were used by Alasdair Morrison in the committee, convener. At the time, you said that you did not hear the remark. It is in the *Official Report.* I think that it would be a good idea if the remark was withdrawn and an apology given to the members concerned.

The Convener: I will consider the matter. I said last week that I did not hear it. I would like to consider the issue and seek advice from the clerks. We will come back to that. If you had given me notice of your point of order, Mr Gibson, I could have dealt with it before the meeting. I have not yet seen the *Official Report* of last week's meeting. It would be a courtesy to allow me to consider the issue rather than to ask me to make an impromptu judgment.

Richard Lochhead (Moray) (SNP): Further to the point of order, convener. As one of the members of the committee who was labelled a fascist by Alasdair Morrison, I think—

The Convener: No, Richard. Stop.

I have asked Rob Gibson not to push his point at the moment. I have taken note of it and will come back to the committee. I need to consider the issue. As I said last week, I did not hear the offending comment, and I have not seen the *Official Report*. I would like to consider the issue before I give my judgment to the committee. I do not think that that is unreasonable.

Mr Alasdair Morrison (Western Isles) (Lab): Further to the point of order, convener. I make no apology for raising this. I am happy to discuss the issue at this time, but when we discuss it is obviously your call. The *Official Report* shows that the words were used but it does not demonstrate the context in which they were used.

The Convener: I need to consider the issue. I will not have a debate on something that I did not hear said at last week's meeting. With the committee's permission, I will consider the point of order rather than make an impromptu judgment. If Rob Gibson had given me notice of his point of order, I would have been able to consider it beforehand and to give a judgment when he raised it.

We will move on. First, I remind all members to switch their mobile phones and BlackBerrys to silent. Secondly, I have received apologies from Elaine Smith, who is stuck on the M8 on her way here. I do not know when she will arrive.

Crofting Reform etc Bill: Stage 2

10:07

The Convener: I welcome visiting members, members of the public and the press to the committee. I note that John Farquhar Munro is with us.

We are considering stage 2 of the Crofting Reform etc Bill. I welcome the Deputy Minister for Environment and Rural Development, Rhona Brankin, and her officials. Everyone should have the paperwork in front of them: a copy of the bill as introduced; the second marshalled list of amendments, which was published on Monday; and the groupings of amendments. My target is to reach the end of section 34 by the end of today's meeting.

Sections 11 to 13 agreed to

Section 14—Division of croft

Amendment 3 not moved.

Section 14 agreed to.

Section 15—Subletting

The Convener: Group 1 is on conditions for subletting and assignation. Amendment 154, in the name of Rob Gibson, is grouped with amendments 155 and 156.

Rob Gibson: Amendment 154 would insert a new section 15(2A), which is detailed in amendment 155.

The intention behind this group of amendments is to allow a distinction between the role of community landlords and that of the old-fashioned kind of crofting landlord. The community landlord is only beginning to be developed in terms of crofting law, and I believe that their involvement on behalf of their communities shows that they have a different role.

I seek members' support for the amendments, which would allow community bodies as defined in amendments 155 and 156, which deal with subletting and assignation respectively, to be consulted in the process in which the Crofters Commission is involved. By inserting proposed new subsections (2A) to (2C) into section 27, and proposed new subsections (1A) to (1C) into section 8, of the Crofters (Scotland) Act 1993, we would stress the importance of the role of community landlords.

In South Uist, there is about to be an historic buyout of 850 crofts. Like all crofting estates, the new estate—of which 92.8 per cent of the land will be crofting land—will have to make a profit. It is important to the community that the system should work for the common good. Amendments 154, 155 and 156 are merely enabling amendments: they would allow community landlords to be consulted but they would provide for no power of veto on decisions to do with subletting or assignation.

I move amendment 154.

Maureen Macmillan (Highlands and Islands) (Lab): I understand what Rob Gibson is getting at, but I have concerns about the amendments. He said that they are enabling amendments, but amendments 155 and 156 provided that

"the Commission shall not give consent … unless they have received notification in writing from the community body that they have no objection"

to the subletting or assignation. That looks like a power of veto over a subletting or assignation.

Although I have great sympathy with the idea that community bodies should be fully engaged with the commission in decisions about who becomes a crofter through subletting or assignation, I am concerned that the approach that Rob Gibson proposes could be used to limit the kind of people who are accepted into the crofting community. For example, the provisions in amendments 154 to 156 could be used to ensure that only the relatives of people who are currently crofters could acquire crofting land under a subletting or assignation. Such an approach could create inward-looking crofting communities.

The committee of inquiry on the future of crofting should consider the matter. We must strike the right balance between the needs of new crofting communities and the need for communities not to be too prescriptive about who can take on a croft under a subletting or assignation.

Mr Morrison: I agree with Maureen Macmillan. Given the focused nature of the bill that we are now considering, I support her suggestion that the issue be considered by the committee of inquiry. The committee will have time to discuss that issue and many others properly and calmly, away from the frenetic atmosphere of the political forum. I will vote against Mr Gibson's amendments.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): Sections 15 and 16 seek to simplify and clarify the 1993 act's provisions on subletting and assignation respectively. Amendments 155 and 156 would give crofting community landlords more rights in relation to subletting and assignation than would be available to any other crofting landlord. The approach would be inequitable and it would disadvantage crofters whose landlord happened to be a crofting community body. The amendments could discourage crofters from supporting crofting community estate buyouts under the Land Reform (Scotland) Act 2003. Amendment 156 might also undermine a crofter's fundamental right to assign

his croft. I ask the committee to reject amendments 154, 155 and 156.

Rob Gibson: I listened to the debate and was interested to hear members call for the involvement of the committee of inquiry. At last week's meeting, I tried to probe the scope of the inquiry. It would be good if the minister could give us an indication of its remit—I realise that she cannot do so now.

The matters that I raised require delicate discussion, which should take place. My amendments were probing amendments, so I am prepared to withdraw amendment 154 on the condition that the matter will actually be discussed. The interests of community landlords are a new consideration. This is a developing area, and it must be taken seriously, not dismissed.

10:15

The Convener: You have said that you are prepared to withdraw amendment 154 on the understanding that the issue will be considered further by the committee of inquiry that the minister is setting up. I do not expect the minister to make a statement on the full range of issues that are to be discussed at that inquiry, but the committee is most keen for the matter to be raised in the course of that inquiry. It would be helpful if you could take that on board, minister.

Rhona Brankin: Yes—sure.

Amendment 154, by agreement, withdrawn.

Amendment 155 not moved.

Section 15 agreed to.

Section 16—Assignation

Amendment 156 not moved.

Section 16 agreed to.

Section 17—Bequest of tenancy of croft

The Convener: Group 2 is on bequest of tenancy. Amendment 23, in the name of the minister, is grouped with amendment 24.

Rhona Brankin: Amendment 23 will simplify the transfer of a croft to a legatee on the death of a crofter. Section 17 will accelerate the recording of the new crofter in the register of crofts. The amendment relates to a legatee's obligation, on accepting a bequest of a croft tenancy, to notify the landlord and copy the notice to the Crofters Commission. Failure to notify acceptance of a bequest timeously renders the bequest void. The initial four-month time limit—starting from the date of death of the crofter—for giving notice must be adhered to unless the legatee is prevented from doing so by some "unavoidable cause", in which case there will be a further six months in which to do so. Amendment 23 emphasises that whether a cause is accepted to be "unavoidable" is a matter for the commission.

The second subsection in amendment 23 is a technical provision to clarify that a legatee, as well as giving notice to the landlord within the further six-month period for notification, must copy that notice to the commission. Amendment 24 is a consequential amendment.

I move amendment 23.

The Convener: Are there any comments or issues that members wish to raise on the amendments?

Nora Radcliffe (Gordon) (LD): It seems quite straightforward.

The Convener: Okay. If there are no views that members wish to express—apart from, "It seems quite straightforward," by Nora Radcliffe—I suggest that the minister does not need to wind up.

Amendment 23 agreed to.

Amendment 24 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 3 is on appeals to the Scottish Land Court. Amendment 25, in the name of the minister, is grouped with amendments 26, 32 to 37 and 58 to 65.

Rhona Brankin: These are technical amendments that are designed to improve the operation of the appeals mechanism. They set out a framework for the process of making appeals as well as the grounds on which appeals can be made. They create a process whereby the Crofters Commission can be guided to a correct decision by the Land Court, rather than the court substituting its decision for that of the commission.

Members will recollect commenting on the appeals mechanism at stage 1, I think at the committee's meeting in Inverness. There was a concern that a full review on the grounds of fact and law would be burdensome and could require the Land Court to repeat much of the work that had been done by the Crofters Commission.

Since before stage 1, there has been detailed consultation with Lord McGhie, chairman of the Scottish Land Court, on the handling of appeals to the Land Court against commission decisions. The amendments in this group reflect the outcome of those discussions. The upshot is that appeals are to be on limited grounds. It is not considered that the Land Court should be an open review tribunal. Instead, the court is being empowered to supervise the decisions of the commission in a manner that allows it to consider fully whether the commission acted in accordance with the normal

rules of natural justice, reasonable discretion, evidence, and so on, in coming to its decision.

In effect, if the court is satisfied that the commission has properly considered the matters before it and reached a decision within its legitimate area of discretion, the court will not interfere with that. I assure members of the committee that the outcome that we now have will provide an efficient system of appeal, which will ensure that costs should not get out of hand and which will deliver justice to crofters.

Amendments 58, 59, 61, 62, 63 and 64 introduce detailed grounds of appeal, thereby removing the possibility of open appeal, which would allow the case to be wholly revisited and freshly decided by the Land Court. The Land Court is not to be empowered to substitute its own decisions in cases properly considered and decided by the commission. That reflects the Land Court's supervisory role, while acknowledging that decisions of the type under appeal primarily involve matters that are for the consideration and legitimate discretion of the commission.

Amendment 60 introduces a power for the Land Court, after hearing an appeal, to remit a case back to the commission without directing the commission as to what to do. That is known as open remit. The commission would be able to decide how to proceed in light of the decision in the appeal. Amendment 60 recognises that the types of decision taken by the commission are generally matters for regulation by the commission rather than the Land Court, to which there is a limited rather than an open power of review. The court is to be empowered to supervise fully the decision making of the commission, without having the power to substitute its own views in relation to decisions properly taken by the commission.

Amendment 26 introduces an open remit in relation to appeals regarding bequests of croft tenancy. Amendment 36 introduces open remit in appeals relating to decrofting decisions.

Amendment 65 provides for stated case procedure to be the mechanism for appeals to the Land Court against commission decisions. Stated case procedure means that the commission is required to provide a statement of the facts that have been established and the reasons for the decision. The commission would also set out the questions on which the court's opinion is sought, which would be based mainly on the grounds for appeal intimated by the appellant. The parties to the appeal and the commission must prepare and adjust the stated case before it is submitted to the Land Court, and the process needs to be regulated so that each party knows what is required. The first part of amendment 65 empowers the commission to take the steps necessary, for its part, to state a case and to prescribe procedures that must be followed by others—for example, the appellant—in relation to the preparation of the case. The second part of the amendment clarifies that the commission may be a party to an appeal or a reference to the Land Court.

Amendment 25 provides for appeal by stated case following a decision of the commission on an objection to a legatee becoming the tenant of a croft under a bequest. The general grounds of appeal, as proposed in amendment 59, would be available.

Amendment 32 makes similar provision in relation to a decision of the commission to reorganise a township, or to a decision on a reorganisation scheme. Amendment 35 does the same in relation to commission decisions on decrofting in the case of resumption or vacancy of a croft. The second part of amendment 35 provides that appeals against decrofting directions also include appeals against decisions to modify conditions attached to decrofting decisions.

Amendment 33 is associated with amendment 32 and clarifies that the general grounds of appeal are to be construed so as to apply to a reorganisation scheme and the preparation of such a scheme. Amendment 34 corrects an inaccurate cross-reference. Amendment 37 removes the provision that gives the Land Court discretion to hear evidence in appeals relating to decrofting. It is now considered that that is best left to the Land Court to regulate, by way of rules if necessary. I ask the committee to accept the amendments.

I move amendment 25.

The Convener: This is one of the issues that we discussed when we took evidence on the bill. Members were concerned that we could move to a position in which almost any commission decision could be reviewed automatically. I am grateful to the minister for reconsidering the issue and coming up with more clearly specified occasions on which it will be possible to appeal. For the provision to operate effectively, it would be useful to translate it into a leaflet or information note, so that people understand what is allowed. It is one of the provisions in the bill that will be worth monitoring. However, it is good that the amendments have been lodged, as they are an improvement on the bill as drafted.

Maureen Macmillan: I agree. There was a feeling that the quasi-judicial role of the commission was becoming almost redundant, because anything could be appealed to the Land Court. I am pleased to see the amendments, as they indicate that appeals will be limited to specific areas.

Amendment 25 agreed to.

Amendment 26 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 4 is on market value. Amendment 27, in the name of Alasdair Morrison, is grouped with amendment 28.

Mr Morrison: Amendment 27 removes the provision for tenancies of deceased crofters to be valued at market value. Amendment 28 removes the provisions that regulate the setting of market value by the Land Court, failing agreement between executor and legatee. Members will recall that, when we took evidence on the bill, the reference to market value proved hugely problematic and resulted in general confusion and suspicion. That is why I urge the Executive to consider accepting amendment 27.

Reference has already been made to the committee of inquiry on the future of crofting. I urge the minister to reflect calmly—as she is doing—on the remit and membership of that committee. She should not be bounced into prescribing the committee's remit and membership hastily. I am not trying to be prescriptive, but I respectfully urge her to consider asking the committee to look at market value, which was hugely problematic at stage 1 and led to general confusion.

I move amendment 27.

Maureen Macmillan: I support Alasdair Morrison's amendments. The words "market value" are especially problematic for many crofting communities. If they are removed from the bill today, we will hear a great cheer go up from crofting communities in the Highlands. I hope that the minister will accept the amendments.

Rob Gibson: I am very much minded to support the amendments. However, I am interested in hearing what the minister has to say about the evidence that was given by Derek Flyn, the crofting lawyer, who said that the market value will be established in all circumstances, one way or another. When the minister appeared before the committee in Inverness, we had the opportunity to discuss the matter with her, and it seemed to me that the Government agrees that market value will always be established. There is a question that must be answered. It is absolutely unjust that the carer of a crofter who is removed to hospital and is no longer capable of making decisions must establish the market value of the croft to pay for care of the crofter. That is the sort of question to which the crofting community want an answer. Given that crofting lawyers say that market value will always win out, how can we resolve the dilemma? Will amendments 27 and 28 change the situation?

10:30

Rhona Brankin: On market value, the original reason for amending section 10 of the 1993 act was to end the practice of croft tenancies being undervalued in executries. The result of that practice was that less residue was available for some beneficiaries or creditors of the deceased crofter. I am well aware of the discussions about the use of market value and the concern about the potential wider implications. That is why I am more than happy to accept Alasdair Morrison's amendments. I am sure that the committee of inquiry will consider the issue further.

Mr Morrison: I will press amendment 27 and I am comforted by the fact that the minister said that she is sure that the committee of inquiry will consider the issue.

Amendment 27 agreed to.

Amendment 28 moved—[Mr Alasdair Morrison]—and agreed to.

Section 17, as amended, agreed to.

Sections 18 to 22 agreed to.

Section 23—Access to croft

The Convener: Group 5 is on access to crofts. Amendment 143, in the name of Maureen Macmillan, is grouped with amendments 144 to 148.

Maureen Macmillan: Section 23 gives a crofter the right to make an application to the Land Court to be granted access over a neighbouring croft, if that croft is owned by his landlord. It has been pointed out to us that the provision is narrow. A lot of disputes about access are between crofters, and adjoining crofts might not have the same landlord. If a crofter buys his croft, he is the landlord. It seems reasonable that there should be some mechanism for a crofter to go to the Land Court to get right of access over a neighbouring croft, regardless of whether it is owned by the same landlord. I ask the minister to consider accepting my amendment, or to assure me that she will consider whether the criteria can be broadened out to cover crofts that have different landlords.

I move amendment 143.

Rhona Brankin: A consequence of amendment 143 might be that the valuable provisions in section 23 would not stand up to legal challenge. Under section 23, if a crofter requires access to their croft from a public road and it is reasonable for access to be taken through land owned by their landlord—which would of course include land tenanted by crofters with the same landlord as the applicant—they can apply to the Land Court to

require their landlord to make access to their croft available.

Crofts are or can become isolated from public roads for various reasons. Without access to a public road, a croft can be unworkable. Section 23 will provide a remedy in such situations to ensure that crofts can be worked.

Amendment 143 attempts to give crofters the right to secure access to their croft over any land through application to the Land Court, regardless of whether the owner of that land has any crofting landlord relationship with the crofter. The amendment would affect the property rights of landowners whose land simply happened to adjoin croft land and who had no connection with the affected crofter. I do not think that such interference is necessary or justifiable. In any case, it would be open to crofters to negotiate access with such persons. I understand the intent behind the amendment, but it would risk damaging the clear provisions in section 23, which will be beneficial to crofters and will provide necessary safeguards for landlords.

I urge Maureen Macmillan not to press her amendments. I would be happy to meet her to discuss matters, as fundamental property rights issues are involved. I do not know whether anything further can be done; the area of law in question is complex. I know that the issue concerns her.

Maureen Macmillan: I recognise that amendment 143 might have been drawn too widely. I am happy not to press it if I can discuss with the minister how section 23 might provide comfort to crofters who cannot get access to their croft because an adjoining croft, which previously had the same landlord, has been bought by a different landlord, who may be a crofter.

Amendment 143, by agreement, withdrawn.

Amendments 144 to 148 not moved.

Section 23 agreed to.

Section 24—Reorganisation schemes

The Convener: Group 6 is on reorganisation schemes. Amendment 29, in the name of the minister, is grouped with amendments 30, 31 and 118.

Rhona Brankin: The amendments in the group will simplify the provisions in the bill relating to reorganisation schemes by eliminating potential obstacles to such schemes. Crofters have been increasingly eager to pursue reorganisation schemes in recent years; the provisions will assist such schemes.

The current provision in the 1993 act constrains the Land Court in fixing rents for crofts that have been formed under a reorganisation scheme. That is because the Land Court must apportion and fix the rents for the new crofts so as not to exceed the aggregate of rents of crofts that were on the same land pre-reorganisation. However, that does not take account of the fact that existing rents might be hopelessly out of date. It should be possible for the Land Court to fix rents fairly without the constraint that the current provision imposes.

Combined with section 39(5) of the 1993 act, which provides that rents fixed by the Land Court must remain in place for seven years, except by agreement of landlord and crofter, the current provision creates inflexibility with regard to aggregate rent levels that might encourage landlords to resist reorganisations unnecessarily. Amendment 118 seeks to remove that constraint.

Section 38A(1) of the 1993 act provides for a right of appeal against a commission decision to reorganise a township or against a reorganisation scheme. However, we require to extend the provision to include owners of other land included in a reorganisation scheme. The land in question, which will be in the vicinity of a township, is not otherwise covered by the 1993 act and may be included with the consent of the Scottish ministers if the Crofters Commission believes that it should be used for the enlargement of crofts in the township or enlargement of a common grazing used by the township. Accordingly, amendment 30 seeks to extend the right of appeal to the Land Court to anyone who owns such land.

Amendment 29 seeks to include owners of land of the type that I have just described, and any occupiers, in the list of persons to receive the necessary intimations and opportunities for comment in relation to the preparation of a reorganisation scheme and notification of any modification of an adopted scheme that is subsequently made by the Land Court.

Amendment 31 is a drafting amendment and is consequential to amendment 30.

I move amendment 29 and ask the committee to support the other amendments in the group.

Amendment 29 agreed to.

Amendments 30 to 33 moved—[Rhona Brankin]—and agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Resumption and reversion

The Convener: Group 7 is on granting approval for resumption or decrofting. Amendment 149, in the name of John Farquhar Munro, is grouped with amendments 150 and 151.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning. I want to make what might seem like a strange request right at the outset. I do not want to move amendment 149, but—

The Convener: Mr Munro, you must move amendment 149 if you want to have a debate on all the amendments in the group. If you wish to withdraw the amendment subsequently, we will consider your request.

John Farquhar Munro: Okay. In that case, I will move amendment 149.

I have lodged this group of amendments to protect croft ground from what has been happening in the crofting counties. Large swathes of croft territory have been removed from agricultural use and have been developed in ways that most people view as detrimental to the crofting way of life, and I hope that these amendments will help us to resolve that situation.

With the current legislation, the Land Court has taken the view that if a local authority has granted planning consent for a development on a croft, it has little opportunity to object to or oppose that decision. Instead, it feels that it is up to the Crofters Commission to recroft the land. By lodging this group of amendments, I seek to counter such a suggestion by ensuring that the Land Court is the ultimate arbiter in all applications affecting croft agricultural land and common grazings for which planning consent has been sought and given. After all, it has been tasked with governing what happens on croft land.

No matter what application comes forward, approval by the local planning authority should not be the determining factor—that should be the Land Court's decision. If the Land Court decides that the approval given by the local authority would be detrimental to the crofting way of life or the crofting community, its decision should be the paramount and ultimate one.

I move amendment 149.

10:45

Maureen Macmillan: I have great sympathy with what John Farquhar Munro wants to do. We are all aware of the circumstances to which he refers.

The minister may be able to tell us, but I do not know whether the granting of planning permission is a democratic process that shows that people think that the suggested use would be a reasonable use of the land in question. It would be better if the commission and crofting communities had input from the start of the planning process and through the local plan in deciding where it is appropriate to build houses.

I understand where John Farquhar Munro is coming from, because we perhaps need a backstop, but I am not sure whether his amendments would provide one.

The Convener: We tested the issue more than once when we were taking evidence. The Taynuilt case was mentioned in particular, but people talked about other circumstances as well. We need clarity about the consultation process. We need to know who should be involved and when the right time is for both the Crofters Commission and individuals to have their views heard about whether land should be decrofted, how it should be developed and whether crofting is appropriate.

Whether the area in question is existing crofting land or could be used for crofting, the discussion should probably take place during the planning process, but the key point is that the system should be clear. I am glad that John Farquhar Munro lodged amendment 149 so that we could get the issue on the agenda. It is clearly a concern.

For the record, will the minister set out how she sees the system working? As a committee, we felt that the Crofters Commission was not sufficiently engaged because people raised issues with us about it. It is perhaps a question of the minister setting out on the record that, although she expects the commission to take an active interest, there is also a role for the community through the local plan process. Obviously, individuals will still have a right to comment on individual applications.

We need clarity about how the system will work. People need to know when they can make their views known and when the Crofters Commission will be expected to engage with local planning authorities, so that the boat is not missed and good land that could be used for crofting does not disappear.

Rhona Brankin: There are problems with the amendments, although I understand the committee's concerns and what John Farquhar Munro is trying to do.

Amendments 150 and 151 are founded on the mistaken view that the granting of planning permission is used to determine whether a development is for a reasonable purpose. The existence of planning permission is normally deemed to be evidence that a development relates to the public interest and will be permitted by the planning authority. If a development does not comply with the statutory local plan and is not in the public interest, planning permission will not be granted.

Section 20(1) of the Crofters (Scotland) Act 1993 requires that the Land Court should consent to resumption for a reasonable purpose, having relation to the good of the croft or the estate or to

the public interest. If planning permission had been granted, it would be extremely difficult to argue that the resumption or decrofting would not have relation to the public interest. The amendments would achieve nothing and would raise false expectations. Even when planning permission had been granted, a resumption or decrofting application could be refused.

I understand the intention behind John Farquhar Munro's amendments, which seek to constrain what is deemed unnecessary development on croft land. However, if the amendments achieved what they intended, they would risk obstructing potentially worthwhile developments, including affordable housing developments in crofting communities. Therefore, I ask the committee to reject the amendments.

As I have said, I acknowledge the concern. The committee has been in touch with the Minister for Communities, and I have contacted the minister again on the committee's behalf to get an up-to-date position. I have not yet got that information, but my understanding is the same as the committee's, that there is a commitment to look at the matter with a view to the Crofters Commission becoming a statutory consultee. It is important to ensure that the Crofters Commission is engaged, as it is engaged with some communities at the moment, in considering the challenging issues around the use of croft land for affordable housing developments. That seems to be the correct way in which to make progress on the issue. Given that consideration of the Planning etc (Scotland) Bill has concluded, there will be discussion about how the Minister for Communities does that, in which I imagine members of the committee will want to be engaged.

John Farquhar Munro: As I mentioned last week, I am impressed by the committee's understanding of the complex law on crofting. In response to previous representations that I made to the committee, I received a degree of comfort from the committee and the minister that, where development was proposed on croft land, the local authority would ensure that the Crofters Commission was a statutory consultee. That issue has not yet been confirmed, but I understand from the minister's comments that we will see something in that regard. That is to be welcomed.

My amendments would ensure that all proposals for developments on croft land would be submitted to the Crofters Commission for its ultimate approval. That is reasonable in the circumstances. We place great emphasis on the fact that we have a Crofters Commission that was legally established to govern and oversee all issues relating to crofting. I see no reason why it should not be included officially in the bill to ensure that the process that I have described continues and is safeguarded in the future.

As I said at the outset, I seek to withdraw amendment 149, but it is my intention to move the other amendments.

Amendment 149, by agreement, withdrawn.

Amendment 150 moved—[John Farquhar Munro].

The Convener: The question is, that amendment 150 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

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)
Smith, Elaine (Coatbridge and Chryston) (Lab)

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

Amendment 150 disagreed to.

Section 26 agreed to.

Section 27—Decrofting

Amendment 151 not moved.

Amendments 34 to 37 moved—[Rhona Brankin]—and agreed to.

Section 27, as amended, agreed to.

Sections 28 and 29 agreed to.

Section 30—Use of common grazing

The Convener: Group 8 is on the use of common grazing. Amendment 38, in the name of the minister, is grouped with amendments 158 to 163.

Rhona Brankin: Section 30 covers the use of common grazings, in particular, for forestry purposes. The subsection that is being amended affords exclusive economic and recreational use to the crofters. We want to ensure that the proposals in the bill do not conflict with the general right of access in the Land Reform (Scotland) Act 2003. Amendment 38 will achieve that aim.

I thank Ted Brocklebank for lodging his amendments and creating an opportunity to discuss section 30. There has been considerable misunderstanding of the purpose and implications of the section. In the light of some of the more

inaccurate comment, it is not surprising that some owners are concerned. This is not a backdoor route to crofting community control of the owner's interest in common grazings. It remains the case that, if crofting communities want to have control of common grazings, the only option is to buy the owner's interest. The provisions of the Land Reform (Scotland) Act 2003 make that possible in every case.

No one will use the provision to build houses or wind farms on grazings, as the owner's rights—including the right to resume—will persist. This is about facilitating new uses that would not be detrimental to existing uses by the graziers or the owner. Such uses might involve, for example, keeping stock away from areas for part of the year to ensure that wild fruits or herbs could be harvested by crofters without contamination; setting aside an area as a bull park; or growing biomass. The question of restoration, remediation or compensation for loss of value that amendment 162 seeks to address should not arise in most cases. When it does, it can and ought to be addressed by the existing provision in proposed new section 50B(9) of the 1993 act, which permits the Crofters Commission to set conditions when it approves an application.

Amendments 158 and 160 seek to make explicit the right of an owner to object to a proposal. Although I consider that an owner could take the opportunity, as a consultee on a proposal under the bill as proposed, to state an objection, I am happy to look again at these provisions for stage 3 with a view to stating expressly the right to object. The commission would consider a reasonable objection in deciding whether to approve or reject a proposal or to approve a proposal subject to conditions.

Amendment 160 seeks to repeat the requirements of proposed new subsection 50B(2) of the 1993 act so as to apply those to the Crofters Commission. That may reflect a misunderstanding over the drafting of section 30. I am in absolutely no doubt that, in deciding whether to approve an application, the commission will be required to satisfy itself that the requirements of that subsection are met. That part of amendment 160 is, therefore, unnecessary. I also say, for the avoidance of doubt, that a commission decision on an application under proposed new section 50B of the 1993 act will be subject to appeal to the Scottish Land Court and that compliance with the requirement in proposed new section 50B(2) could be considered in such an appeal.

Amendment 159 seeks to remove discretion from the Crofters Commission to decide whether to review the implementation of a proposal. I think that it is crucial that the commission has discretion in deciding whether to undertake a review; otherwise, the provision could be used in a vexatious fashion—for example, in repeated calls on the commission to review a proposal in a short period and without new or adequate grounds for such a review. The existing wording will ensure that the commission will conduct a review where that is necessary. The commission is bound to meet its general duty, which is specified in section 2 of the 1993 act, to keep under review all matters relating to crofts and crofting conditions. A refusal, without good reason, to conduct a review of an approval where there is specific provision for review would be a breach of that duty.

Amendment 163 is consequential on Executive amendment 10, which was debated last week, when the committee agreed to leave out section 2. Amendment 163 should have been lodged along with last week's amendments but was missed because of an oversight, for which I apologise. I ask the committee to support amendments 163 and 38 and to resist the amendments in Ted Brocklebank's name.

I move amendment 38.

11:00

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I heard what the minister said and I am happy that she appears to be taking on board some of my fears. As the committee is aware, crofters may use common grazings for agricultural purposes, for peat cutting and—with the landlord's agreement—for crofter forestry. Other activities or developments, such as wind turbines, phone masts or buildings, are classified as development and are dealt with by an agreement between the landlord and the crofter or by resumption by the landlord, with proceeds divided evenly between both parties.

Such arrangements are excellent examples of how landlords and crofters are working together for mutual benefit throughout the crofting counties. I still contend that that could be about to change if section 30 is agreed to as introduced. The principle of enabling crofters to instigate alternative uses of common grazings may be laudable, but as I understand the bill, it totally ignores landlord agreement and partnership working. The bill also threatens the current 50:50 split of proceeds and may fatally undermine the principle of co-operation between landowners and crofters, which should be nurtured rather than impaired.

My amendments 158 and 160 would ensure that once a crofter's application for an alternative use of common grazings had been approved by a grazings committee, the commission would have a duty to seek the landowner's agreement for the alternative use. In reaching its decision, the

commission would have to have regard to whether the proposal would be detrimental to the current use of the rest of the common grazings and/or the landlord's interests.

Amendment 159 would ensure that, if asked to do so by the owner or the grazings committee, the commission was obliged, rather than merely enabled, to review its decision or to change the conditions that were attached to a decision.

Amendments 161 and 162 relate to my other amendments in the group and are intended to constitute a probing mechanism. I hope that the minister will offer further assurances, because I believe that a gap exists in the bill. If an alternative use is begun on land but the approval is revoked, who will pay for the land to be restored to its original state? It would be unfair to place the entire cost on the owner, who, under the bill as it stands, need not have agreed to the change of use. I believe that the solution goes back to my other amendments and reinforces the importance of conducting all changes of use with the co-operation of crofters and owners. Before I decide whether to move my amendments, I wonder whether the minister can give me further enlightenment.

Rob Gibson: The vexed question of whether we want crofter development to be in the lead is one of the issues that the bill is about. The bill tries to get crofters into a more entrepreneurial mood to use their land to generate more income for them and their families. The arrangements under which crofting has existed need to be developed to allow that to happen.

I would not like to think that major developments that a landlord initiated on common grazings would take precedence over crofters' interests. An interesting case that affected how compensation is paid or not paid to a landlord when development by a crofter takes place is known as the Kinlochewe judgment.

It is quite obvious to me that if we are reasserting the interests of the landowner over those of the crofter, the idea of a crofting community is being challenged by Ted Brocklebank's amendments and I oppose them.

Rhona Brankin: I reiterate that I think there has been considerable misunderstanding of the purpose and implications of section 30. I say to Ted Brocklebank that I am satisfied that amendment 38 will mean that section 30 will be useful in allowing crofters to develop land. I have nothing else to add, but I ask members to reject Ted Brocklebank's amendments.

Amendment 38 agreed to.

The Convener: Amendment 158, in the name of Ted Brocklebank, was debated with amendment 38. Do you wish to move amendment 158, Mr Brocklebank?

Mr Brocklebank: First, I reject Rob Gibson's thought that amendment 158 would mean imposing the role of the landlords on the crofters. The amendment does not mean that if the owner refuses to agree to the proposal, the development cannot go ahead. It simply means that crofters and owners will be expected to work together to achieve a satisfactory outcome. In no way is it intended to stifle the alternative use of land on the part of crofters.

Additionally, I ask the minister whether the implications of the European convention on human rights—

The Convener: You are meant to be winding up, Ted. I do not want to reopen the debate.

Mr Brocklebank: Fair enough. I will not press the amendment, but I will take advice and I retain the right to bring the issue back at stage 3.

Amendment 158 not moved.

Amendment 39 moved—[Rhona Brankin]—and agreed to.

Amendments 159 to 162 not moved.

Section 30, as amended, agreed to.

Section 31 agreed to.

Section 32—Contravention of, or failure to comply with, common grazings regulations

Amendment 163 moved—[Rhona Brankin]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

After section 33

The Convener: Group 9 is on complaints and the grazings committee. Amendment 157, in the name of Rob Gibson, is the only amendment in the group.

Rob Gibson: Amendment 157 is an attempt to clarify a situation that is not clear at the moment. There are 750 grazings committees around the crofting counties. Many of the committees work perfectly well within their rules of operation. However, one hears of problems for individual crofters in many places due to circumstances of which I will give three brief examples.

The first example arises when a grazings committee is down to two members, one of whom has three shares, and another two. Controversial decisions could never be taken on behalf of the person with two shares. Secondly, there could be a grazings committee on which none of the

shareholders bar one has any animals, nor wants to have any on their grazings. That one person could be outvoted. Thirdly, issues could arise relating to the management style of the grazings clerks or to favouritism towards certain shareholders rather than others. There are many other potential situations.

I have been in contact with the Crofters Commission and I was told that, if a crofter makes a complaint about the activities of a grazings committee to the commission, it can be investigated. However, I have failed to find any formal means whereby a crofter can make a complaint to the Crofters Commission and have it explored to a resolution. That is why I feel that something is missing from the bill and that the provisions in amendment 157 should be included in it. The amendment is not about frivolous, vexatious or unreasonable remarks made by an individual about a crofter on common grazing. It is written in a form that would allow the process to be carried out on the record and would allow what seems to me to be an anomaly in how grazings committees work to be covered by the bill. That would give the Crofters Commission a say in sorting out any particular problems.

I move amendment 157.

Rhona Brankin: Amendment 157 would create a mechanism by which a crofter who felt that he had cause for complaint against his grazings committee could circumvent the established democratic procedures of the grazings committee and grazings regulations to complain about the committee to the Crofters Commission. The Crofters (Scotland) Act 1993 contains provisions for establishing democratically elected grazings committees and democratically agreed grazings regulations. Section 32 strengthens grazings committees and regulations by making provisions for the suspension or termination of a crofter's grazings shares if he fails to comply with the regulations.

For those provisions to work, it will be necessary for the committees and regulations to be managed effectively. Creating a mechanism to circumvent the committee and to complain directly to the commission would undermine committees and discourage them from trying to resolve difficulties and maintain and manage the grazings regulations.

There is already a mechanism, under section 47(8) of the 1993 act, to deal with cases of significant failure by a grazings committee. That allows the Crofters Commission to remove the members or clerk of a grazings committee. Making use of that provision would be a drastic step, however, which would be unlikely to engender long-term co-operation between grazings shareholders.

In essence, amendment 157 cuts across the long-established and democratic approach to managing common grazings. That can be a difficult area, but I would not want one or two specific difficulties to undermine what we think is an important democratic process.

Rob Gibson: I have listened to the minister. I think that it is an anomaly in the law that a means of redress such as that which I have described is not open to crofters. There are anomalies in the several examples that I gave. A mechanism whereby crofters can raise issues should the grazings committee system not be working ought to feature in the bill. The nuclear option of removing a grazings committee is something that all of us would object to as being way over the top. My amendment 157, which would insert a new section entitled "Complaint as respects grazings committee", would allow for people to get drawn up before things reached that stage and without threatening the grazings committee system. I intend to press the amendment.

11:15

The Convener: The question is, that amendment 157 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

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)
Scott, Eleanor (Highlands and Islands) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 157 disagreed to.

Section 34—Schemes for development

The Convener: Group 10 is on schemes for development. Amendment 40, in the name of the minister, is grouped with amendments 41 and 42.

Rhona Brankin: Amendment 41 relates to an application by a landlord or owner, or a person on their behalf, to develop croft land or common grazings in accordance with a scheme for development. It clarifies that written objections may be made by the commission or by another interested party only on the grounds that will be inserted by amendment 42. It is preferable to have clear statutory grounds for objection to proposals to develop croft land or common grazings in

accordance with a scheme for development, rather than open grounds, which could generate irrelevant or frivolous objections. Amendment 42 sets out those grounds. An objector must give reasons explaining why it is believed that one or more of those grounds exists. Amendment 40 will ensure consistency with terminology in other provisions.

I move amendment 40.

Amendment 40 agreed to.

Amendments 41 and 42 moved—[Rhona Brankin]—and agreed to.

Section 34, as amended, agreed to.

The Convener: The rest of the marshalled list is beyond the point at which the committee agreed to stop, so we have reached the end of our stage 2 proceedings for today.

I return to the point that Rob Gibson made at the start of the meeting, to put my comments on the record. Paragraph 9.2.5 of the code of conduct for MSPs obliges all members to treat one another "with courtesy and respect". I remind members that they are expected to do that in committee proceedings. I have read the *Official Report* of the meeting in question, and I regret any falling short of that expected standard. However, points have been made articulately on the record and I now consider the matter closed. I refer members to paragraph 9.2.5 of the code.

It does not help me to conduct proceedings when members have private, off-agenda conversations. That is particularly difficult when we are dealing with stage 2 proceedings, as we are today, as I must try to ensure that everybody knows where we are. That is my view on the matter.

I aim to complete stage 2 proceedings at our next meeting on 29 November. Amendments to all the remaining sections of the bill—sections 35 to 47, including schedules 2 and 3—should be lodged with the clerks by 12 noon on Friday 24 November.

I thank the minister and her officials for their assistance.

11:19

Meeting suspended until 11:22 and thereafter continued in private until 12:36.

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