



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 2 November 2016**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**  
**8<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

\*Peter Chapman (North East Scotland) (Con)

\*Mairi Evans (Angus North and Mearns) (SNP)

\*John Finnie (Highlands and Islands) (Green)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Jamie Greene (West Scotland) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*John Mason (Glasgow Shettleston) (SNP)

\*Mike Rumbles (North East Scotland) (LD)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Patrick Krause (Scottish Crofting Federation)

Donald MacKinnon (Scottish Crofting Federation)

Murray McCheyne (Scottish Land & Estates)

Peter Peacock (Community Land Scotland)

Lucy Sumsion (NFU Scotland)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Rural Economy and Connectivity Committee

*Wednesday 2 November 2016*

*[The Convener opened the meeting at 10:00]*

### Crofting Law Reform

**The Convener (Edward Mountain):** Good morning. I welcome everyone to the eighth meeting in 2016 of the Rural Economy and Connectivity Committee. I remind everyone to switch off their mobile phones, please. No apologies have been received.

We have one item on the agenda, which is the first of four evidence sessions on the committee's review of priorities for crofting law reform. The committee recognises that a considerable amount of work has already been undertaken to identify potential improvements to crofting legislation. We want to hear from a range of people with an interest in crofting to allow us to make an assessment of the priority action that has so far been identified and to make recommendations on any action that we consider necessary to progress and complement the reform process.

We are all conscious that some very contentious crofting issues are being discussed in the media and elsewhere at present. The committee does not intend to stray into those areas. I urge all committee members and witnesses to focus on the legislative priorities rather than personalities.

I welcome the panel. I hope that I will pronounce all the panellists' names right. Lucy Sumsion is crofting policy manager and regional manager for Argyll and the islands in NFU Scotland; Patrick Krause is chief executive of the Scottish Crofting Federation; Donald MacKinnon is from the Scottish Crofting Federation young crofters group; Peter Peacock is policy director of Community Land Scotland; and Murray McCheyne is chair of the crofting policy group in Scottish Land & Estates. Good morning to you all.

I ask each of the witnesses to briefly outline the work that their organisation does in relation to crofting.

**Murray McCheyne (Scottish Land & Estates):** Good morning. Scottish Land & Estates is a membership body. In this context, our organisation represents the interests of landowners, although not by any means exclusively large landed estate owners with a crofting interest. Our membership includes owner-occupier crofters, whose land size and value can be very small. We are a

membership organisation that primarily represents the interests of our group.

I very recently—in this year—became the chair of the crofting group. I am not a landowner or a crofter; my background is that I am a solicitor in private practice and a lot of the work that my practice and I do relates to crofting law. We represent crofters and landowners.

**Patrick Krause (Scottish Crofting Federation):** Good morning. I represent the Scottish Crofting Federation, which used to be the Scottish Crofters Union. We still operate as a union to an extent in that we are a representative body. We are the only organisation that is dedicated to representing crofters and crofting. All that we do relates to crofters and crofting.

We have widened our remit since 2001. We now do development work as well. Therefore, we are not simply a representative organisation; we are also a crofting development organisation. Currently, our two main development projects are a crofting skills training course and crofting connections, which some members will be familiar with. That involves working with young people.

**Donald MacKinnon (Scottish Crofting Federation):** Good morning. I am representing the Scottish Crofting Federation young crofters group, which is a branch of Patrick Krause's organisation. We are seeking to highlight the issues that affect young crofters. We have identified those as access to homes, land and jobs in the crofting areas. We try to promote and look for solutions on those three areas, so that we can encourage more young people to get into crofting and encourage those who are already involved to stay part of it.

**Lucy Sumsion (NFU Scotland):** Good morning, everybody. I am a policy manager covering crofting for NFU Scotland. Like SLE and the SCF, it is a membership organisation. Across Scotland, we have about 8,500 members, of which just under 800 are crofter members. Our members include landlords, as well as farmers who have crofting interests, so quite often we will have farmers who have a croft, too.

We have a crofting Highlands and Islands committee, for which I provide the secretariat. Sandy Murray, who is the chair, should have been here today, but he is on holiday, so you have got me instead.

We do a significant amount of work with our crofting members. We have just completed a survey with them, and I might share some of the results from that with you later today.

**Peter Peacock (Community Land Scotland):** Community Land Scotland represents a growing number of the new community landowners in Scotland. We are only about six years old so,

apart from Donald MacKinnon's group, we are a much younger organisation than the other parties represented here.

We have 70-plus members, and our membership is growing. We have only comparatively recently discovered that more than 20 per cent of crofts exist on community-owned land, so we are taking a closer interest in crofting as an issue for our members, because the health of crofting very much determines or significantly influences the health of the communities on the land that our members own and manage.

I want to make clear that we are not representing crofters—we do not have a remit to do that—but representing crofting landlords in the context of community ownership. Recently, we have been trying to work out from our members' point of view what crofting is there to do in the 21st century, what it does to serve our community owners' ambitions, what would need to change to serve those ambitions better and therefore what limited things ought to change in crofting to support those ambitions. Therefore, we have quite a narrow focus at present. That is partly because of our organisational resources, but I am sure that we will get into the detail of all that as the conversation goes on.

**The Convener:** Thank you all very much. I am sure that you are all well aware how the process works: questions will be put and I will try to get you all in to say your bit on each of them. It is a question of managing time and getting through all the questions. I will try to give you all equal opportunity to say something. If there is something that you feel is very important and you want to come in on it, just make sure that you catch my eye and I will try to bring you in. Rhoda Grant has the first question.

**Rhoda Grant (Highlands and Islands) (Lab):** Good morning. The Crofting Reform (Scotland) Act 2010 changed the role of the Crofters Commission—indeed, it changed its name to the Crofting Commission. How successful has that been? Are further changes to that role needed?

**Patrick Krause:** I will have a go at that. It is a very interesting question, because the two answers are yes and no. The SCF wanted there to be a majority-elected Crofters/Crofting Commission. It actually changed name partly because we had changed our name from the Scottish Crofters Union to the Scottish Crofting Federation, with the idea that the remit would be wider and that the commission would be there for crofting as the federation is there for crofting.

In light of what has happened recently, there needs to be a review of the commission. We really need to look at the report of the committee of inquiry on crofting, led by Professor Shucksmith,

which I think came out in 2007. We need to keep that report live, because its suggestions on how regulation can work still have a lot of value. The report suggested that the commission should be much more devolved. We think that part of what has gone wrong with the commission is that it is still very centralised. Too few people take too much responsibility for decisions that should be happening at a more local level.

**Lucy Sumsion:** I agree with Patrick Krause. The other element of change in the Crofting Commission was that it lost its development role when it was transferred to Highlands and Islands Enterprise. At the time, it was moved from crofting development to crofting community development, which a number of organisations felt may not have been to the benefit of crofters and/or crofting. It has been raised at the cross-party group on a number of occasions.

I have done a bit of basic number crunching on the survey that we have just completed. We asked our members:

"Do you think there is a role for a single organisation dedicated to crofting development, which would be able to give advice and information to individual crofters and crofting communities as well as promoting the wider interests of crofting?"

Sixty-seven per cent of the respondents were in favour of that; interestingly, 57 per cent were in favour of crofting development being given to—or going back to—the Crofting Commission. Only 17 per cent suggested HIE. There was a random selection of other suggestions, including the Department for Environment, Food and Rural Affairs, which I thought was interesting. The whole issue of development and how crofting is taken forward is muddled at the moment.

**Peter Peacock:** It depends whether the question is about the 2010 act in general or the commission in particular—maybe I will address both. In many respects it is probably too early to say how successful or otherwise the 2010 act has been because a large chunk of it was about registering crofts and common grazings and all the procedures around that. That is under way and is progressing. Although people have anxieties about the amount of effort that has to go into that, it is not the talk of the steamie that that is necessarily a problem. From that point of view, it is probably quite early in the life of the act to work out whether that is right.

The point that I was going to raise was the one that Lucy Sumsion has just raised about crofting development. There is a clear gap there, which our members are anxious about. The 2010 act focused the role of the commission purely on regulation and moved it away from the general development of crofting. That development role ostensibly passed to HIE but, as Lucy said, HIE

has either chosen to or been told to interpret it—I am not sure which—as being about the development of crofting communities and not the development of crofting. That means that people are not addressing the modern art of how we do crofting. What are the technical requirements? What is the best practice? What is the advice that you need to do certain things in crofting? How do you diversify and make more income from your croft? Crofters, and therefore the crofting community, would benefit from that by improving how they do crofting.

There is a big gap there, which we would like to see filled. It is an open question how we do it. We do not particularly have a view on that. It could remain at HIE or it could go to the agricultural colleges. It could be a contract that is put out by the Government. It could go to a number of places. However, the principal point to make is that, from our members' point of view, there is a definite gap in the crofting development function.

You may not want to get into this now, convener, but Rhoda Grant's question raised a wider issue, which Patrick Krause also touched on. I do not think that there is any doubt that a debate is beginning to happen in crofting, beyond the technicalities and legalities, about whether we need all this regulation. Is it holding back the system? There are questions about whether it is time to think about decentralising some of the commission's decision making. If you go around the Highlands and Islands, there is no doubt that there is a difference of perception between Shetland, for example, and the Western Isles about what crofting is and what its current features are.

10:15

**The Convener:** I do not want to go too far down that line because we are going to come on to regulation. You have identified an important point and you will get a chance to talk about how that regulation fits with regional variations. I will stop you there, but I am not taking anything away from what you have said.

**Murray McCheyne:** I echo what Lucy Sumsion and Peter Peacock have said about the developmental role that was taken from the commission. There is a clear gap there and more could be done in that respect.

At a higher level, Scottish Land & Estates is interested in sustainability, openness and predictability. To some extent, those words inform the idea that has emerged from what Patrick Krause and Peter Peacock say about decentralisation. Local democracy is great; no one in the room would say that it is a bad idea. However, if that is where the ultimate decision-

making process is centred, one policy might be applied in Shetland while a different policy is applied in Mull or Islay or central Inverness-shire. That shows the benefit of having one place, which is currently the Crofting Commission, for policy.

Rhoda Grant asked whether the changes since the 2010 act was passed have been good. There are six elected members of the Crofting Commission and, anecdotally, I have heard it said that it could be clarified whether those members are there to represent a constituency or they have just been put there because a constituency have elected them. There has been some confusion about that among the crofting public, if I can put it like that, and perhaps there has also been some confusion among the members.

I query whether there is a need for other specialist representatives on the Crofting Commission. I raise that point because Scottish Land & Estates recognises that there is an appointed member—not elected—for landowners' interests on the commission, and if landowners have a representative, could there be room for representation for other places?

I also commend the work that the Scottish Crofting Federation does. Peter Peacock talked about the need for people to be promoting crofting. I know that Patrick Krause's organisation does a great job in doing that and that should be commended. It is therefore wrong to say that nobody is talking about the development or promotion of crofting.

It is good to have a one-stop place for crofting if at all possible. Today the committee has before it five representatives from four different organisations. Is the system completely broken? I do not think so. Could improvements be made to how the Crofting Commission functions? Absolutely.

**The Convener:** Donald MacKinnon, you represent the future and you will definitely have views about how crofting could be developed and encouraged. Do you want to share those at this stage or would you like to share them later?

**Donald MacKinnon:** I just want to echo what the others on the panel have said. The increase in democracy through the election of commissioners has been a positive thing. I hope that it has led to an increase in accountability; SCF young crofters welcome that. However, I am also concerned about development and would like to know more about what HIE is doing for the development of crofting and whether giving HIE that role has been a positive move. That is unclear at the moment.

**The Convener:** When we see the representatives from HIE, we will definitely ask them.

**Rhoda Grant:** I have two follow-ups. First, on the role of elected members, there seems to be a concern that that role might not be that clear—are they representatives of a constituency or are they elected to the commission to fulfil a different role that is not answerable to a constituency? That makes it quite difficult for elected commissioners to work. Do you want the role to be changed to make it clearer? If their role is first and foremost as commissioners, does it work to have elections? I am interested in how that all ties together.

**The Convener:** Murray McCheyne has caught my eye. I remind everyone that we are talking about roles, and I ask Murray to remember that in his response.

**Murray McCheyne:** That is duly noted, convener. I did not intend to stray from that.

With elected people, there is a tendency for things to become partisan. As I said, it is good that there is a central organisation geographically. It does not have to be located in Inverness, but it happens to be located there because that is the easiest place to get to from across the crofting counties. However, it is good that people come from different constituencies—I use the term in its broadest possible sense—into a central body.

One query is whether we could have a clearer definition of the role that sets out whether the commissioners are there to represent interests. There is perhaps a need for more evidence to be gathered on that in the process that is under way. Under the current system, I think that the commissioners are not there for that purpose. They are put there because they have been elected, but they have a bigger remit that is beyond their own specific interest.

I am sure that Patrick Krause has a view that he will be happy to share on the empowerment of local communities in that regard. We need more clarity on whether that is the role of the crofting commissioner. Is he representing his local constituency, if you like, or is he there with a bigger interest? Does he say, “I have been elected, and that is the end of it,” and then not think of himself as the member for Ross-shire and Sutherland, the central Highlands or wherever, depending on how it happens to be carved up?

There is perhaps a need for more evidence on that before there is a knee-jerk reaction and we abolish the central body and go down a devolved route. That would make the Scottish Parliament’s oversight much more difficult. I am sure that we will come on to this issue later, but the system is difficult to understand now and, if we had a plethora of decision-making bodies, it would become so much harder. It does not need to be made more complicated than it already is.

I am not sure whether that answers Rhoda Grant’s question directly, but that is what I offer.

**The Convener:** I noticed Patrick Krause nodding, so he will probably want to come in. I do not want to stifle conversation, but I am conscious that we are still on question 1 and it is 20 past 10. We have 14 or 15 questions before us, and that is without supplementaries. I would like to move on, so I ask the witnesses to make quick comments.

**Rhoda Grant:** Convener, could I just add a second point, which ties into that?

**The Convener:** Yes.

**Rhoda Grant:** We have commissioners who are unelected and who are not representative. We have different forms of crofting in different places. People say that crofting in Shetland and crofting on Skye are totally different. In looking at the legislation and how things are regulated, rather than devolving the powers of the commission locally and having mini commissions all over the place, is there a way of making commissioners more responsive to and reflective of their electorate so that the commission can be responsive to the different ways of crofting?

**Patrick Krause:** It is difficult to give a short answer to that, but I will try. To go back to the Shucksmith report, it did not say that there should not be a central body; it said that the people in the central body should be there on the mandate of their localities. I am very much of the opinion that, when the majority move in a direction, there is not a lot of point in standing in the way and saying, “No—it’s not like this.” The fact that people think that the commissioners are there as local representatives is justification enough for making them local representatives. All crofters think that the commissioners are there because they elected them and that they are their local representatives. Therefore, it would make sense if the commissioners were local representatives.

To give them a clearer mandate, there need to be clearer local groups that have discussions about the things that they want their commissioner to take to the commission. That is the devolution part of it. It does not have to be a particularly complicated system; it is just about people meeting and talking to one another and giving those commissioners a mandate.

I need to make two small points. First, I do not think that primary legislation is the place where the way in which the commission operates should be described. Let us suppose that, at this point, when we are going into the second election, we were thinking about doing things differently. If we decided that the commissioners would be local representatives, we could not do that without changing primary legislation. That is crazy. The primary legislation should contain the intention of



what we want the commission to be, but should enable there to be sufficient flexibility—whether through secondary legislation or whatever route would need to be taken in a bureaucratic sense—to ensure that we can change things and say that, for the next election, we will do things differently.

Secondly, the commissioners are far too involved in administration and the workings of the commission. I do not want to get specific about what is happening at the moment—

**The Convener:** I will not let you.

**Patrick Krause:** In a broad sense, commissioners should not be making decisions at local meetings. That is something that there are trained people in the commission to do. I would like to suggest that the model of board governance that is used in the third sector is one that would be much more suitable. The commissioners should be there as a board, and their duties should be to ensure that the commission is following its remit, carrying out its objective, staying legal, being prudent and so on. Those are the rules that trustees of third sector organisations have to abide by.

**The Convener:** I think that we understand what you are saying.

Peter Peacock has a question. Peter, your skills as an orator notwithstanding, I ask you to keep your question as short as possible.

**Peter Peacock:** It is noble of you to acknowledge those skills, convener.

Thinking back to the conversations that people had around the 2010 act and the desirability of having elected commissioners, the idea was to ensure that the commissioners were attuned to crofters, that they understood them and that they were accountable to them. The proposal also provided a guaranteed geographic representation on the commission.

However, notwithstanding the fact that the commissioners are elected—those that are elected—tensions have arisen because of the fact that they are performing the role of a regulator. They are not members of a body with wide discretion, so it is not like being in a local authority, where people can make choices about how regulation is carried out—for example, whether absenteeism is to be focused on for a while, or whether there should be more of a focus on registering common grazing or whatever. Fundamentally, the commission cannot change the law. The commissioners are there to ensure that the regulation is carried out, but they do it with a sensitivity that comes from being elected by crofters and being attuned to their interests and needs. The commission is the only regulator that I can think of that has an elected component.

Compared with any other elected body, there is a fundamentally different set of dynamics within the commission.

**The Convener:** I think that I understand what you are saying. Patrick Krause has said that he believes that the commissioners should have an oversight function and should help the commission to perform its job but should not get too involved in issues individually. Is that what you are proposing, too?

**Peter Peacock:** No, I have not really thought about that, to be honest. I am speaking from the point of view not of my knowledge in my role at Community Land Scotland, but from the broader knowledge that I have gained as a result of having dealt with some of these matters over the years. One of the best functions that the commissioners used to perform was to go to meetings in local village halls and sort out issues, listen to cases and hear about what was happening. That seemed to deliver outcomes that people could witness. They could make representations and see the decisions being made.

I am not entirely sure that I go along with Patrick Krause in that respect. It is a big topic in its own right and it would require a great deal more discussion before we could alight on a change to the current system. The fundamental tension is to do with the idea of an elected regulator.

10:30

**The Convener:** I am conscious that it is a big issue, on which the committee will need to deliberate and come to a view in due course. I do not want to stifle discussion—I know that there are people who want to speak—but I will have to move us on, as John Finnie has an important question to ask.

**John Finnie (Highlands and Islands) (Green):** Good morning, panel. I want to ask about the register of crofts. Peter Peacock has already mentioned it and we know that the process is under way. The register covers assignation, decrofting and subletting. What are the panel's views on its operation so far?

**Peter Peacock:** The only point that I will make is that, because I do not hear about it every day from our members, I guess that it is going okay.

**John Finnie:** You referred to anxieties earlier.

**Peter Peacock:** It is quite a challenging process, particularly in relation to common grazing and so on, but those who have gone through it now have clarity about certain situations. I do not hear from our members that it is a big problem, or that it ought to be fundamentally changed. People are learning from experience, they are learning how to go through the process and it is happening

progressively. I do not rate it as a big issue right now.

**Lucy Sumsion:** I have a point of clarification regarding Mr Finnie's question. There is a register of crofts, which is held by the Crofting Commission, and there is the crofting register, which is held by Registers of Scotland and is to do with mapping and so on.

**John Finnie:** It is the mapping register that I am asking about.

**The Convener:** Having clarified that and taken a moment to gather your thoughts, do you have a comment on that?

**Lucy Sumsion:** Patrick Krause might want to say more, because the Scottish Crofting Federation was more involved in some of the community mapping that went on.

Our members are concerned about the cost of the process. They are also concerned that any challenge can only be made through the Scottish Land Court. That is a foreboding thought for many, which means that they will not go down that route. However, it is early days.

One of the specific issues that was raised as being problematic—again, this is in primary legislation—was the requirement to advertise twice in local papers. It has been raised in the sump report, and it seems to be overbureaucratic to ask crofters to jump through those hoops. A lot of people will not have thought about it yet, because they have not had a trigger event to enable them to register.

The mapping of the common grazings is still outstanding—we might come on to that if we talk about common grazings.

**The Convener:** You can be assured that we are definitely coming on to common grazings; we will do that slightly later in the meeting.

**Lucy Sumsion:** Initially, there was funding to map all the common grazings and the Crofting Commission was going to do that. There have been serious implications in terms of the resource taken to do that, and the funding has been withdrawn—at least for the moment—so no more common grazings are being mapped. There is disappointment among some people who were in the process, and there are an awful lot of common grazings still to be mapped.

**Donald MacKinnon:** I will pick up on Lucy Sumsion's point about the public notification in the press. As well as being overly bureaucratic, it represents a huge amount of money coming out of crofting, as it costs a lot to put a wee notice in the local paper. Whether that is really necessary needs to be looked at.

**Patrick Krause:** Lucy Sumsion mentioned community mapping. We are very much of the opinion that the register should be populated through community mapping by getting groups together in village halls to look at their assets. It should be used as a development exercise as well as a legislative exercise.

We think that there should be a lot more community mapping and that the Government should help with that. Registers of Scotland has a project manager, but one person giving a bit of advice on community mapping is not enough and is not what we are talking about. We want some hands-on support—we want trained people to go out and help communities to map. We also want mediators to be used to resolve the disputes that inevitably come up.

On adverts, we are strongly against having to place two adverts in local papers. Why is that in primary legislation? Having such a prescriptive act that says, "You will place two adverts," is crazy.

We have heard quite a lot of complaints from people that there is not enough information on the crofting register. Theoretically, that information lies on the register of crofts, but information on things such as access rights on crofts, the number of shareholders and who the shareholders are should be very easy to access through the crofting register, which is online. We can see the map, but we do not know who the shareholders are or what rights are attached to the croft with that boundary.

My final point is that the grazings need to be mapped.

**Murray McCheyne:** I have several points to make. On Patrick Krause's point about transparency, make no mistake: we are on a journey as far as the crofting register is concerned, and not unrelated to that is the land register of Scotland. The sooner the two registers are completed, the better. That will take at least another 10 years, but the process has been started. It is not like the old sketch from "The Two Ronnies" in which someone who wants to get somewhere is told, "Well, I wouldn't start from here." We are where we are, and it is a good place to be.

As Patrick Krause said, a lot more information can be added to the crofting register at a later stage. However, Mr Finnie asked whether there are problems with the crofting register. There is one major problem, which is that the registration of the common grazings has ground to a crashing halt. At a recent meeting of the crofting stakeholders group, people asked why that is the case. It was explained that it is because there is a lack of funding between Registers of Scotland and the Crofting Commission. We are in a phase in which 333 or so of however many common

grazings there are—someone in the room might have those statistics—have been registered. We are about to embark on dealing with the hard cases, which involve crofting communities where there is disagreement and where, as Patrick Krause said, there is a need for a mediator to come in and deal with the problems.

However, we will never be able to have a full and proper discussion about common grazings until the crofting register is complete. Therefore, one tangible point that this committee and the Scottish Parliament can consider is the funding for common grazings registration. We are going to talk about the issue later, but it underlines the importance of ensuring that one of the serious priorities is getting the crofting register complete.

The Scottish Land Court has been mentioned. As a solicitor in private practice, I represented appeal number 8 and appeal number 16 in the Land Court, and I have another case pending with the Land Court about common grazings. Does the system work? Yes. We have a tried and tested way of appealing that is not complicated. It might be perceived to be expensive and cumbersome, but it does not have to be. Anecdotally, I can tell you that, as soon a case is put before the Land Court, if people have pockets that are deep enough, they might manage to slug it out, but what usually happens is that the case gets resolved very quickly, which is helpful. It is a good system that is not broken, and we are on the road to getting it complete.

As far as the cost of adverts is concerned, unless a control is put on the free market regarding what a press agency can charge, the position is not going to change. If we changed the system now, with around 3,000 crofts out of 19,422 having been registered—that will give the committee an idea of the scale of where we are with croft registration—would that be fair to those who have already registered? I do not know. It depends on what we are trying to achieve. If the goal is getting the crofting register complete, maybe we need to look at changing the system.

**The Convener:** The cabinet secretary is due to appear before the committee and I am sure that the question of funding will be raised with him.

**John Finnie:** Is there a role for HIE to play in the mediation that Patrick Krause said is required?

**Patrick Krause:** I think that we should be using a mediation organisation. There are several really good community mediation organisations in Scotland.

**Peter Peacock:** I do not see a role for HIE in that.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I seek 30 seconds of indulgence,

convener. My signature as minister is on the Crofting Commission (Elections) (Scotland) Regulations 2011. I direct Patrick Krause to the point that, in that piece of legislation, there might be the ability to change things that he suggests need primary legislation. The schedule defines the constituencies, how many they are and what their scope is. Regulation 16 says that candidates may stand in only one constituency. The regulations also require candidates to submit a couple of hundred words of a statement, to which they may be held accountable by their electorates later.

I will now move to my question, convener.

**The Convener:** That was 32 seconds, Stewart.

**Stewart Stevenson:** Very close, then.

One of the things that we set out to deal with was absentee crofters and neglect of crofts. The old arrangements and the new have sought to address that. How successful have we been? Should we be doing more?

**The Convener:** I have been pretty good at starting at one end of the panel and working along. I will now start in the middle and work outwards. Lucy, do you have something to say on this?

**Lucy Sumsion:** Yes, thank you. When NFU Scotland made a submission on the bill that became the 2010 act, we were very much of a mind that the important aspect was not absenteeism per se, but activity. That is still our opinion. The Crofting Commission has put resources into the pursuit of absenteeism, but in many cases neglect and underutilisation are more significant. It may well be that what is preventing young crofters from being able to access crofts is neglect and crofts not being made use of. There are issues around succession and people being enabled to move out of crofts. There are also issues around allowing people to have multiple use of a number of crofts to make an economically viable case.

Activity is difficult to define. We know about one of the problems from farming and the recent common agricultural policy negotiations. This is partly why the commission may not have tackled the matter before now. First, there is the issue of resources, but how do we go on to a croft and judge whether there has been neglect? There is a lot of work to be done on how to define “activity”. For crofting it is not purely agricultural; there are multiple uses of crofts these days. Certainly, the neglect aspect is the significant bit.

**Stewart Stevenson:** I want to return to something specific before others come in. Do you not consider that the economic value that is derived from crofting should also be attached to the community, which is a broader community than a single crofter or croft? In other words, the

person who derives the benefit from the crofting activity should be part of that community by residence.

**The Convener:** May I clarify that? What you are asking to be defined is a comment on the 32km restriction.

**Stewart Stevenson:** Correct.

**The Convener:** And whether you think that that is important. Is that right?

**Stewart Stevenson:** Yes. The NFU is saying that the important part is the activity, not where the person who derives benefit from the activity is resident. I am asking whether that is really what you are trying to say.

**Lucy Sumsion:** No. The two go hand in hand. One recognition of the value of crofting is population retention and keeping people in the population. You could have an argument about whether it is better to have six families in six very small crofts or to have one person making a better agricultural and economically viable unit out of those six crofts. It depends on what your objectives are and what you are trying to achieve, and on being realistic about what is possible on the ground. Six families might come into that community, but there might be no jobs or no housing. All those things come into play, too.

**The Convener:** I know that Donald MacKinnon will have strong views on this, and we would be delighted to hear them.

10:45

**Donald MacKinnon:** I think that the process is working. As Lucy Sumsion mentioned, it has focused on absenteeism, which is obviously the easiest issue to deal with, as it is easy to measure the distance away from the croft.

The way forward lies in reminding crofters about their responsibilities and duties as crofters and trying to find ways for them to deal with matters themselves and sort out their situation, perhaps by arranging a sublet of their croft so that they fulfil their duties. We see that as a way for young crofters to get into crofting rather than the Crofting Commission having to go through the process of removing a tenant from a croft, which will obviously take a lot of resources and time.

It is really about encouraging crofters to sort things out themselves, obviously with the overlying threat that the commission may step in at some point.

**Patrick Krause:** What Donald MacKinnon has said is really pertinent. The issue can be dealt with to an extent in the communities themselves.

Stewart Stevenson's point about occupancy being important to the community and absenteeism damaging communities is really important. We made the point in our submission on the Crofting Reform (Scotland) Bill, as did the NFU, that neglect is probably more important than absenteeism. That said, absenteeism affects communities.

We are very much against the amalgamation and enlargement of crofts. That can happen as a result of absenteeism. If too many crofts are left unused, the temptation is to amalgamate them. As Lucy Sumsion said, there could then be only one family instead of potentially six, 10 or however many. It is almost a definitive aspect of crofting that it has populations in remote areas. That is a very important point.

That ties in with the community mapping idea that we have talked about. If crofting communities map their assets, they can see which crofts are not being used and which crofters are absent, and the community can decide what it will do about that. Very often, it is about incentives. It is about asking the commission to help to bring crofts back into use and provide support to people who have crofts but do not use them.

We used to have a crofting new entrants scheme. Perhaps not enough money was involved in that, but everyone remembers it as a positive force in getting people to give up crofts that they did not use. The new entrants scheme staff would go out and talk to crofters, help them and explain that there were people out there who wanted the tenancy of their croft and that they could help them to pass on the tenancy to a young person, such as Donald MacKinnon. They explained that they should not be scared of that. A lot of people sit on crofts because they are worried. They do not know how it all works. Therefore, that could be a positive thing.

**John Mason (Glasgow Shettleston) (SNP):** I am a complete outsider on the matter. I live in a city, so I do not know about crofting, but listening today has been fascinating. As an outsider, I was especially interested in some things that Donald MacKinnon said. We do not tell people in the city how to use their land and, as far as I am aware, we do not tell farmers how to use their land. Why should we tell crofters how to use their land?

**The Convener:** That is a good question. If Patrick Krause wants to be brave and stick his head above the parapet, I ask him to do so briefly.

**Patrick Krause:** I will be brief. Look at council housing and housing associations, which tell tenants how to treat their houses. Tenants can be evicted for the lack of use or the misuse of a public asset such as a council house or a housing

association house. It is the same thing. The system is regulated.

**The Convener:** That is a very good answer.

**Murray McCheyne:** John Mason asked a very probing question, which goes right to the heart of why the crofting legislative system is the way that it is today. That is a big political football to kick around, but I urge you all not to lose sight of it. I am not going to supply the answer, except to state SLE's attitude: simple is good; understandable and predictable is good. Any system that leads to uncertainty is not good.

Lying behind Stewart Stevenson's question was the question whether absenteeism is the elephant in the room and the big problem. SLE's view is that that is absolutely not the case. At an earlier stage, SLE had said that use is more important—that view has already been mentioned—and that remains the situation.

The situation that Donald MacKinnon described is really pertinent. You need to be aware that in the current regime, because of absenteeism and the need to put land to a purposeful crofting use in terms of the legislative parlance, schemes are devised to ensure that absenteeism is not a problem. What is the end result of the schemes? As Donald said, people like him are being given the use of the sublet of a croft. You can argue the rights and wrongs of that, but is there a big problem? I do not think so.

If you were to ask someone from the Crofting Commission to give you statistics on absenteeism, I think that they would tell you from the census that there are—I have heard this figure anecdotally—about 800 absentee crofters. If there are about 19,500 crofts, you might think that that is a big problem. If the pressure were to increase for something to be done about absenteeism, what would happen? Are 800 people looking for crofts? Patrick Krause will be able to tell you how many people he has on his organisation's books who are looking for a croft. That figure is not 800. Is absenteeism a problem? No.

Recently, I met the previous chair of the Crofting Commission, who asked whether Scottish Land & Estates has members who would be willing to work with the commission in identifying vacant crofts or those that have fallen into neglect. Scottish Land & Estates is actively looking at that process. We are canvassing members to ask whether we can help solve the problem, because it is in no one's interest for land and crofts to be sitting unused. Is absenteeism the biggest problem? No.

**The Convener:** If Peter Peacock has something fundamentally different to add to that I would welcome it, but I ask him to keep it as short as possible.

**Peter Peacock:** To return to Stewart Stevenson's point, both residence and use are important. You can have people who are resident but not using, and that is as much of a problem—in fact, it is more of a problem—as people who are absent, so both issues are significant.

When we looked at crofting from our members' point of view, we found that there is a demand for new crofts. There is nothing more frustrating than someone wanting a croft and seeing an abandoned, neglected or underused croft. That creates real tension. That partly answers John Mason's point—in the modern day we require people to put the croft to purposeful use because there are people who want crofts.

Our members' experience is that when they have created new crofts, which some have done, the demand has been double the supply. A person sitting behind me in the audience is from the Assynt Foundation. Recently, they asked for expressions of interest for new crofts. I think that there have been 18 such expressions from the immediate locality—that is within a defined area similar to the absentee definition of residence—and another 18 or 20 expressions from beyond that area. That is a significant demand. We found demand to be the same in Galston and Mull. Where people have created crofts, demand is running well ahead of supply.

No doubt we will return to the difficulties that exist in creating new crofts, but the main point that answers John Mason's question is that when there is demand—and we think that there is—we need to make sure that the existing crofts are purposefully used or made available for other people to use. That is what is significant in the economy of an area. For our members, creating new crofts does not add to but potentially detracts from their bottom line as a business. There is nothing in creating new crofts for a landlord in terms of their financial bottom line, but there is a huge amount in it for the development of the economy. It creates more active units and disposable income in the economy and helps the supply chain for agriculture and school places and so on. That is why those matters are important.

**The Convener:** Thank you, Peter. I should remind you that short means short. That was quite long.

**Peter Peacock:** Not compared to what I can do, convener.

**The Convener:** Maybe I will be spared that today.

Peter Chapman will ask the next question, which ties into the issues that have just been raised.

**Peter Chapman (North East Scotland) (Con):**

Around 28 per cent of crofts are owner occupied. What are the panel's views about the measures in the 2010 act that sought to ensure that owner-occupier crofters have the same rights and obligations as crofters who have remained as tenants?

**The Convener:** I ask Patrick Krause to answer that first. Also, although I know that people might think that I am being difficult, we have a huge amount to get through, so succinct answers would be appreciated.

**Patrick Krause:** The point that you raise is important. We need to look at the intention of the legislation, which was that anyone who occupies a croft should be identified as a crofter. Prior to the 2010 act, a crofter was a tenant. Now, anyone who occupies a croft is a crofter and is subject to the same rules, regulations and privileges that all crofters enjoy.

**The Convener:** That presents problems that, by the look on his face, I think that Murray McCheyne is going to talk about.

**Murray McCheyne:** I am like the person who is sitting an exam in school and realises that the question that they have revised for in depth has just come up, so I thank Mr Chapman.

To my mind, the one thing that the crofting sump report talks about is the need to simplify the issues around owner occupation. I do not understand why owner-occupiers are still working under the crofting regime. Remember, when crofting started, it involved a landlord-tenant relationship. We have moved on since then. Forty years ago, the right to buy was given to crofters. I am not advocating that the right to buy be removed, but my big idea concerns the question of why, upon the right to buy being exercised, an owner-occupier is still within the crofting system. It seems to me that there is no good reason for that. There are details around what would happen with the common-grazing share that pertains to that crofter and the croft on which the owner-occupier has exercised his right to buy if he were no longer part of the crofting system—evidence will be coming in about how that will work in practice.

When someone has exercised their right to buy, why should they be any different from any landowner in Scotland? When someone exercised their right to buy their council house, when that scheme was in play, did the local authority then have any say over what they did after that? No. Why, then, should there be any difference in crofting?

There has been a lot of clamour for simplification. The big news that I come to this committee with today is that, if you want something to get your teeth into, you should make

this change. No amount of legislative change will solve the problem with regard to codification of the legislation. The legislation is not wholly or hugely broken. A lot of people do not seem to understand that but, as a lawyer in private practice, I can say that the situation is not any more complicated than it is in lots of other branches of Scottish legislation. However, the one change that I propose would make a big difference.

**Stewart Stevenson:** Does that mean that SLE is opposed to the imposition of real burdens that are associated with the sale of heritable assets? That is what I appear to be hearing.

**Murray McCheyne:** That is a question that I cannot answer, but I am happy to take it away. I have come here wearing my chair-of-the-crofting-group hat, and I am afraid I cannot supply an answer.

**The Convener:** Perhaps you could submit an answer in writing.

**Murray McCheyne:** I am happy to.

**Peter Chapman:** When you say that crofters who have bought their crofts should be treated as any other landowners, are you saying that they should not receive the extra grants that are available to crofters? There are advantages to being recognised as a crofter, as well as potential difficulties.

11:00

**Murray McCheyne:** If I might be permitted to give a political answer, convener, I say that I will come back with the detail of that in a written submission, because it is a practical problem. If someone has taken a grant as a crofting tenant, under the current regime it has to be repaid if the ownership goes somewhere else within a certain number of years. There is detail on that; I do not want to befuddle the issue just now, so I want to come back with fully thought-through evidence. However, in a clean-sheet scenario, why should those crofters be different from any other landowner in any other part of Scotland?

**The Convener:** Murray McCheyne will come back with specific thoughts about things like the crofters' bull scheme, house grants and all those other things that are pertinent.

We will hear from Peter Peacock then Lucy Sumsion.

**Peter Peacock:** I was actually going to obey your encouragement not to answer a question.

**The Convener:** Okay—perfect. Thank you. *[Laughter.]*

**Peter Peacock:** Having said that, I have to say that I am instinctively nervous about Murray

McCheyne's approach. I would have to really think hard about why that is, but it is partly caught up in Stewart Stevenson's question. It is a very fundamental issue about the entire crofting system. The legislation was only approved five years ago to make the situation as it is today, so I would be extremely cautious about moving away from that without some very fundamental thinking about doing so and the impact that it would have on the entire system.

**The Convener:** Okay, Peter. As you have not—unlike Murray—had the chance to revise on this and beg for the question to come up, I am sure that we would welcome a written response when you have had a chance to consider the matter.

**Lucy Sumsion:** I will make one small point of clarification for Peter Chapman. The recent new Scottish rural development programme includes a small farms scheme; it could be that a crofter who stops being a crofter would then be eligible for the small farms scheme. They would not necessarily be excluded from the grants that are available.

**Donald MacKinnon:** I am quite concerned by the suggestion that owner-occupier crofters would come out of crofting. That sounds like it could lead to the breaking up of crofting communities. One croft being in crofting and the next being owner-occupied and no longer a croft could lead to fragmentation of communities and townships.

**Patrick Krause:** I will add a tiny comment. We need to be led by crofters on that. NFU Scotland and the SCF have mandates from members who say that they want crofting to remain a regulated system.

**The Convener:** Okay—that is noted.

**Mairi Evans (Angus North and Mearns) (SNP):** Witnesses have already mentioned some of the recommendations that came out of the crofting law sump report. I believe that it identified 57 issues in crofting law that need to be resolved. I ask each of the witnesses whether they agree about those 57 issues—do they cover the majority of the technical issues or should others be looked at, too?

**The Convener:** That is quite a detailed and in-depth question. If witnesses think of any points subsequent to the meeting and their giving evidence, we would of course welcome their being given to us in writing. The question is quite chunky. Who would like to start?

**Peter Peacock:** The people who have been looking at the matter for some time are the experts in crofting law, so I would not second-guess them. If they say that those 57 things are problems, they are problems as far as we are concerned, too. Most of those people have forgotten more about

crofting law than I, certainly, have ever understood, so we should take them at their word.

The difficulty for me is that the report is about technical rather than policy issues. You could tidy up all the technical stuff, but are there wider policy questions? For us, there are, potentially, such questions, so we are still looking at the detail and will advise the committee about that in due course.

For example, we are coming across issues around creation of new crofts that could be policy questions, but we have yet to bottom that out. There are, potentially, issues in respect of grazings committees—on clarity on how they are governed, and so on—arising from recent events, which may well be policy rather than technical questions. Another example is the fact that there are still issues related to how difficult it is for crofters to get mortgages. Those are more policy matters on which, I suggest, there is perhaps a wider agenda. For that agenda, I would go with what the experts are saying.

**Patrick Krause:** I agree with Peter Peacock that a lot of work went into the sump report and a lot of organisations contributed to it. I would say that the report highlights probably 99 per cent of what needs to be dealt with.

The recent stuff about common grazings has highlighted a couple of issues about how grazings committees work. Eventually, those points will be added to the sump report. There was an interesting recent case in which crofters appealed to the Scottish Land Court, which is the route for crofting appeals, but the Scottish Land Court had to say that it could not make a judgment on the matter because it does not have authority on the particular point of law. That will probably need to be changed.

**The Convener:** I think that Mairi Evans's question is appropriate in the sense that some of the people who were involved in the sump report are coming to give evidence next week. It is helpful that she has asked the question and that you are responding, because that will enable us to ask questions of the witnesses next week.

**Murray McCheyne:** As Peter Peacock and Patrick Krause have said, you will receive written evidence on the issue. I have mentioned that owner occupation and common grazings do not feature very heavily in the sump report. Beyond that, there are other issues.

**The Convener:** They will feature in a short while. We will see people about the report next week, so if there are things that you think the committee could usefully have sight or knowledge of before that meeting, it would be helpful if you could let us know. I know that the timescale is very short, but that would be appreciated.

**Lucy Sumsion:** What the sump group has come up with is very comprehensive. We, SCF and SLE were partners in the group that drew up the report, and the information in it is technical and came from lawyers and the Crofting Commission. It came out of the situations that they were coming across.

I do not know what other questions the committee has coming up, but one of the questions that we asked in our recent questionnaire was about crofting legislation. We asked our members whether they thought that it should stay as it is, be consolidated, be reviewed, simplified and modified or be abolished completely so that we could start again. The vast majority—60 per cent—were in favour of crofting legislation being reviewed, simplified and modified.

A couple of times this morning, it has been mentioned that there are things in primary legislation that should not be there. Although there is great validity in what in the sump report says, when it was written the idea was that anomalies would be rectified in some way—maybe through consolidation. I am not sure that we had in our minds simplification and modification specifically, or that we were conscious of the policy aspects that we wanted to deliver through the report. It is worth bearing in mind that the sump group was established to consider consolidation of the crofting acts, whereas we are now considering more or less starting afresh—although maybe not with a clean sheet—and modifying and simplifying what we have.

**Mairi Evans:** Certain priorities were identified in the list of 57 issues. Are those still the priorities if, as you say, we are now looking at modifying the legislation, or have the priorities changed over time?

**Peter Peacock:** I repeat the point that I made: the way in which the list of priorities has been narrowed down is probably fine. I do not have a problem with it. The problem is the issues that have come on to the agenda since the report was published—for example, the grazings issues. If the current work on grazings shows that we require new legislation or that we need not just a technical change, but instead to do things differently, I would give that pretty high priority for reasons that I will, no doubt, come on to.

**The Convener:** Okay. We will leave it there if you are happy with that, Mairi.

**Mairi Evans:** Yes. That is fine.

**The Convener:** I turn to common grazings. I stress at the outset that I wish to leave aside any current on-going local issues relating to this. I want to get a feel from the witnesses about whether common grazings are working. You may wish to talk about issues such as the composition of the

common grazings committees. I would be interested in your views about the split of shares for common grazings and whether it is right that those could be held separately from a croft. On how apportionment has panned out, is that now the best way to serve the community? The final issue is how money is held by common grazings committees and the relevance of the funds that they have. Are there issues relating to tax and who is responsible for it? Those are fairly meaty issues. I ask you to bear in mind that we are trying to get a feel for common grazings across the whole of Scotland and the crofting counties. This is not about individuals.

I do not know who wants to start on this. Peter Peacock is not shying away—I do not know whether he was just scratching his nose, but the question is coming to him first.

**Peter Peacock:** I am happy to kick off. Common grazings are a significant issue for crofting and crofting communities. The matter relates partly comes to the point that Stewart Stevenson made earlier: it is about how vibrant and active a crofting community is as a whole. If we want vibrant and active crofting communities—as we do, for broad economic reasons—an active grazings committee must be part of the mix. Without that, there is something missing from the community.

We are increasingly aware that common grazings have potential, that might not yet have been realised, for a wide range of diversification purposes, as well as traditional purposes. We know that many grazings committees are inactive or out of office. Ultimately, that cannot be good for the system. They are fundamental to the way in which the crofting sector and crofting communities work. That is why they require attention.

I would not underestimate the extent to which recent events—without getting into them—have made people worry whether, after doing things in good faith and with the consent of the majority in their communities, they are now in jeopardy in some way from what they have been doing. That needs to be clarified and confidence needs to be given back to the system. I understand that there is work going on on that with the commission now: that will give clues on much of the detail on which the committee has touched.

There is another thing that I would suggest, which touches on points that have been made about the system as a whole. To me, how grazings committees work is largely a matter for the grazings committees. Where we see them at their best, they are commonsense people doing commonsense things with consent, and they should be left to get on with it. The less we interfere the better. The committees are a very localised form of democratic control of local assets



and should be determining their own roles, procedures and ways of operating. Only when they are believed to have significantly erred might there be some reason for intervention. Otherwise, give them the confidence to put the effort in to ensure that their community is working effectively, and place in them a high degree of trust that what they are doing is common sense, and is logical and acceptable locally.

**The Convener:** Do you want to come in on that, Lucy? Perhaps somewhere in there you could weave in whether you think that common grazings committees providing an annual report to the commission is appropriate.

**Lucy Sumsion:** We have recently done some work on common grazings with members on Skye. We have held a couple of workshops and, as I said, we have just done a survey.

I would like to read a couple of quotations from the survey, if you do not mind.

**The Convener:** Yes—as long as they are not too local or personal.

**Lucy Sumsion:** No. They just illustrate variation across the country.

The first quotation says:

“Our common grazings have always been very well run and managed and has gained us a great deal through environmental schemes and through other means. We would be very much worse off without it.”

The second quotation is from mainland Scotland, rather than one of the islands. It says that the grazings committee

“is run by a clique of bullies who manipulate, control and prevent new entrants from using the grazings effectively. The rules are made up to suit others and the Clerk is regarded as an ‘overlord’ who tells everyone what to do. We’ve tried to raise it and effect a change and use the regulations properly but it is becoming very stressful and disheartening.”

Another quotation says:

“I cannot comment on the present, but my recollection when I was younger there never seemed to be a problem, people seemed to get along and agree much better.”

11:15

In the questionnaire, we asked whether people were shareholders in their common grazings and how satisfied they were with how their common grazings were operating. On the first question, 54 per cent reported that they were not shareholders in a common grazing. Of those who were, 48 per cent were very satisfied and 34 per cent were satisfied with how their common grazings were working, while 8 per cent had no comment and only 10 per cent were very dissatisfied. It is important to remember that context. Although there have been a lot of press stories about

common grazings, I would say that the majority are working well. However, there is an issue about rebuilding confidence and taking people forward with the confidence that they can work well with their common grazings.

There are some overarching principles that need to be accepted. Peter Peacock alluded to work that all the stakeholders here are involved in, with the Crofting Commission, to draw up best practice guidance for common grazings. It is important to have an attitude of openness and transparency. There should also be sound financial recording and accounting—I do not mean full accounts as in a business, but the sort of thing that any other voluntary group would have. The best practice procedures should be followed.

There are issues about active and inactive shareholders. It is crucial that we consider how that circle can be squared. Remuneration of grazings clerks is another issue, because the amount of work that they do tends to be undervalued. Ultimately, the committees should be answerable to their shareholders, which is important.

On the reports that grazings committees are under a duty to produce, I am not sure that any have actually been done yet, although the commission will be able to confirm that. The way in which a grazings committee works locally will determine how comfortable it feels about reporting. Many issues depend very much on personalities and there will be a range of personalities in any community. In some, people will work well together so that the committee works, but in other situations that just does not happen.

**The Convener:** It would be interesting to hear Donald MacKinnon’s take on the point that Lucy Sumsion has just made about inactive members who have shares in a common grazing. That would give us a young crofter’s point of view.

**Donald MacKinnon:** That presents an opportunity for young entrants to crofting, as does the situation of people holding shares without a croft, which your second question was about, convener. If somebody is not using their share, it could be used by a young entrant, and that could be an entry route for them.

Peter Peacock made a good point about the importance of grazings committees to crofting communities and how they become a focal point in a township. In the legislation and the template grazings regulations that the Crofting Commission produces, the committees’ role is limited to running and regulating the grazings, but there is potential for a wider development role in townships. Grazings committees should not be prevented from doing that, if there is agreement

among the shareholders. An example might be the creation of a silage park to produce winter feed for the animals collectively. That would not be a bad thing for a grazings committee to be able to do, but it might possibly fall outwith current legislation.

On your point about how money is held, I do not see a problem with a grazings committee holding money on behalf of the shareholders if the shareholders agree to that. That makes more sense than trying to recreate the funds when a project such as building a fank or a road is developed. To get money from each individual shareholder would be very difficult.

**Patrick Krause:** I agree with what Donald MacKinnon said, and he said it much better than I could. I would just add that there are many social enterprise business models that could be looked at. It was raised at the meeting of the grazing regulations stakeholders group—which has met only once but is going to meet again next week—that there are business models that grazings could adopt that would show them how to have a clear constitution, manage money and be accountable at different levels of income. Such models could help a lot with how grazings work.

Whether shares can stand alone and not be attached to a croft is an interesting question that has been discussed a lot, particularly over the past few years. I am not clear whether, in law, shares were originally always appurtenant to a croft, but I was told that that was the case. It meant that someone had to have a croft in order to have a share in the grazings. Over the past few years, it has been legally defined that shares can exist by themselves. The feedback that I get from our members is that there is a lot of regret about that and that the original concept of shares being appurtenant to a croft is favoured. The current position, where shares float about by themselves, has caused all sorts of strange situations, not least in the crofting register, where there are deemed crofts that can be illustrated on a map only by a cross.

**Stewart Stevenson:** Can shares be owned by someone other than a real person? If you do not know, you do not know.

**Patrick Krause:** I would have to refer that question to a lawyer.

**Stewart Stevenson:** That is all right.

**The Convener:** The point that Patrick Krause and Donald MacKinnon make about shares that are detached from a croft is that they might prevent the township from enjoying the full benefit of the grazings. What I am hearing used in this regard is not the expression “slipper farming”, which I thought we had got round, but “slipper crofting”. I do not know whether that is relevant,

but perhaps Murray McCheyne would like to comment.

**Murray McCheyne:** If I remember correctly, crofting law talks about that as a specific issue that needs to be addressed, so the answer may be there already. If you pinned me to the wall and asked me the question, I would say that I do not think that shares can be held by a non-natural person. Because the authors of the report have said that there is an issue that needs to be addressed, I am inclined to think that it is possible, but in practice I am not aware of it being a huge issue or concern. SLE is broadly neutral on whether shares should be a separate tenement or tied to a croft. However, common grazings are really important.

Going back to parameters and what a common grazing is, I note that it is a piece of land that is owned by a landowner—be that a community body, an individual or whatever—and over which rights are given. The problems that we have alluded to or talked about specifically this morning arise because there has been a shift and modern life has moved on from where the crofting acts started. There has been a shift away from the agricultural use of common grazings to diversification into alternative energies including hydro schemes, wind farms and environmental schemes, all of which are part of modern-day life in Scotland. Are common grazings regulations fit for purpose where a group of crofters are doing the job because their father and grandfather or grandmother did it and they are being asked to manage, in some circumstances, tens of thousands of pounds? Is that process fit for purpose? No, it is not.

This committee does not take evidence on the matter in a vacuum. As Patrick Krause said, work is on-going with the Crofting Commission, and we are both involved in looking at whether changes can be made to the model under the current regulations. If they cannot, recommendations will be produced on how the model itself might be changed.

With regard to common grazings, the key point is that landowners should engage more with a system in which—like it or not—they are invested, given that it is their land. Can crofters do more to collaborate with landowners? Absolutely. Is SLE promoting engagement to landowners? Absolutely. However, we should not overlook the fact that the current regulations and the 2010 act provide for alternative uses of common grazing land, and schemes are taking place that go beyond the traditional idea of taking land out of common grazing only for forestry.

I am not saying that the legislation is broken—far from it—but more can be done. SLE is seeking

to promote that action to its members in order to see good results in future.

**The Convener:** Peter Chapman has a supplementary question.

**Peter Chapman:** I would like some clarification. I have been a farmer for 45 years, but I farm on the east coast and I do not pretend to understand all the ins and outs of the crofting system. I am interested to know who claims the CAP money under the basic payment scheme and the environmental scheme? Is it claimed by the grazings committee or by the individual crofter in his own right? How does that work?

**The Convener:** Before anyone answers that question, I add that I am looking for a definitive answer. We are three quarters of the way through our time but only halfway through the questions.

**Murray McCheyne:** It is not the landlord or the landowner.

**Donald MacKinnon:** My understanding is that the crofter puts his grazing share on his integrated administration and control system form, and that would be part of his payment, but the grazings committee could claim SRDP for the common grazings.

**Peter Chapman:** How is that money held and then distributed to the various crofters who are involved? Is that difficult?

**Donald MacKinnon:** That is an issue of contention at present. The suggestion is that the money should be paid out immediately to the shareholders, but I imagine that in most circumstances it would be held by the grazings committee and spent on development in the grazings. I would tend to agree with that.

**Lucy Sumsion:** There have been some fundamental issues around the disconnect between the European Union rules and regulations under which the rural payments and inspections division works and what is required under crofting regulations. As we move forward, that disconnect needs to be looked at in some detail.

Some of you may have come across the report that I am holding up, "Trends in Common Grazings", which was published a number of years ago, prior to the latest SRDP. It called for common grazings to be looked at in their own right in the development of agricultural policy, but that did not happen and they were bolted on at the last minute. As we potentially move into a new era for agricultural support, there is an opportunity to look at common grazings in their own right and consider how they can best be supported depending on what we want to achieve with them.

**The Convener:** We will move on—I thank you all for keeping that discussion brief. Richard Lyle will ask the next question.

**Richard Lyle (Uddingston and Bellshill) (SNP):** The Scottish Government set up the crofting legislation stakeholders group to consider the crofting law sump report. It raised a number of issues, but unfortunately there was no parliamentary time in the previous session to deal with them. The 2016 programme for government commits to working on a national development plan for crofting. Have any of you been asked to work on—or are you presently working on—such a plan? If so, what are your priorities for it?

11:30

**Patrick Krause:** The short answer is no. We have not yet been asked to work on a national crofting development plan, but we put forward the idea at the beginning of the previous session of Parliament and it is heartening that the Government says that a national plan is needed.

We have put forward our five actions for crofting, which came from a lot of discussion, debate and conferencing, not least in the conference on the future of crofting that we held at the end of last year. The five actions are targeting financial support, simplifying the law, making crofts available, making croft housing available and having a lead body on crofting development.

On the idea that responsibility for crofting development would go to Highlands and Islands Enterprise, the Shucksmith committee recommended that a unit be set up based on the successful community land unit that existed under Highlands and Islands Enterprise at the time. Peter Peacock has been involved in the area for a long time and he will know that the community land unit has really helped to enable community buyouts. The vision was that crofting development would come under such a unit, which could be called, for example, the crofting development unit—

**The Convener:** Will you focus on the question, please? You answered the first part, which concerned whether you had been asked: I believe that the answer was no. The second part of the question was about what your priorities are. I am quite happy for you to leave your response there rather than going on to talk about how you see the proposal being implemented, because I suspect that the Government will have views on that.

**Patrick Krause:** I will leave my response there, with the five actions for crofting.

**The Convener:** Would that be all right?

**Patrick Krause:** Absolutely.

**The Convener:** I will bring in Peter Peacock next, to be followed by Lucy Sumsion, Murray McCheyne and Donald MacKinnon—Donald, you are last but not least.

**Peter Peacock:** We believe that Community Land Scotland is involved. We have been asked and we are part of the stakeholder group. We regard that as the route into the development of the plan. We had a meeting with the minister a few weeks ago, and he was keen to encourage us to say what we want to see in the development plan. It is a good idea to have that engagement. There is a question about what will go into the plan and who will be responsible for delivering it at the end of the day but, as long as those things are clear, we imagine that it will drive the future of crofting.

For our part, we would like the plan to touch on how new crofts are created and how new entrants are supported. We would also like it to deal with the issues that we have touched on in the grazings committee, including in particular how grazings can be brought into more purposeful and diversified use over time. We would also like crofting development to be dealt with. The national plan implies that there should be some crofting development effort into the future.

We have a pretty clear agenda and we think that we have an opportunity to push that through the stakeholder group. We are certainly not finding any barriers to making our point of view known.

**Lucy Sumsion:** I echo what Peter Peacock has said. As Patrick Krause outlined, the crofting stakeholder forum has been working on the priorities. Initially, we set five, and this year we added common grazings as a sixth priority to be worked on. Members of the stakeholder forum have divided up into subgroups, and each subgroup is working on a paper. My understanding from the Scottish Government is that that will form the groundwork for a national development plan.

We are involved, although I do not think that our involvement has been formalised. That is where we are.

**Stewart Stevenson:** Can I check whether Patrick Krause's organisation is part of the crofting stakeholder forum that others have referred to?

**Patrick Krause:** It is. When I said no earlier, I meant that we had not been formally asked to develop the national plan.

**Stewart Stevenson:** But you have been exposed to the same invitations and discussions as everyone else.

**Patrick Krause:** Yes. We are part of that group.

**Stewart Stevenson:** That is helpful. Thank you.

**Richard Lyle:** And if you were formally asked, you would join in.

**Patrick Krause:** We are part of the group.

**Murray McCheyne:** My answer is the same as the one that Mr Krause gave. We have not been formally asked, but we are engaged.

On our priorities, as I hope I have said, the landowner's interest in relation to a part of a croft is always limited, whether it is a tenanted croft or an owner-occupied croft. That does not mean that landlords are not interested, but the three panellists to my left are perhaps more reactive than proactive. Collaborative working is important, and the common grazings issue is certainly important to landowners. As it happens, I am charged with writing the paper for the stakeholders group. We will come back to that on another day.

**Richard Lyle:** Murray McCheyne?

**The Convener:** I think that we should let Donald MacKinnon have his say.

**Richard Lyle:** Okay—sorry.

**Donald MacKinnon:** I do not attend the stakeholder group, but another member of the young crofters group does. I imagine that they have been involved in the early stages of the plan.

We probably have similar priorities to those that Patrick Krause outlined on access to land, housing and so on. Quite often, when we have these discussions, we leave out the agricultural side of things. Any crofting development plan should include agriculture and an emphasis on how crofts will be actively used in developing the area within the crofting communities.

**Richard Lyle:** As I said, I do not have a lot of crofts in my Uddingston and Bellshill constituency, but you have all been involved in this. Murray McCheyne mentioned what happens when people buy, and I think that his views shocked his colleagues. Do the other panellists want to come up with any similar shocking proposals that should be considered over the next year to resolve the issue?

**Peter Peacock:** I am not following your question.

**Richard Lyle:** We all know that there are problems that, over the years, we have tried to address. I am not a crofter, so I am asking you whether there are any proposals that you think should be on the table in order to resolve the problems?

**The Convener:** I will clarify that for the panel, although I ask Richard Lyle to correct me if I am wrong. Over and above the things that you have talked about and that are in your development plans, are there other relevant issues that the committee should be thinking about? I hope that I have got that right, Richard.

**Richard Lyle:** Yes. I have always found that, if you do not ask the right question, you do not get the right answer. Are there any proposals that you want to see put on the table?

**Peter Peacock:** I do not think that there is a silver bullet that will answer the problems, because it is a hugely complex system. The only point that I will make—I do not know whether you will want to get into it—is the one that I made right at the start. A much more fundamental philosophical debate is beginning about what crofting is for, whether all the regulation is necessary for its future and whether it could be administered differently. Those are fundamental questions that will require an awful lot of debate over a long time.

The Sleat general grazings committee recently published a paper—I think that it is on the crofting federation's website—that postulates its view of a different way of looking at the future of crofting. I do not think that there is any doubt that that undercurrent of debate exists. Those are fundamental issues.

**The Convener:** I have seen that paper and I am sure that other members of the committee have seen it, too. Your point is incredibly valid. The problem is that I am not sure that we have the ability to go through the issue in the time that we have left. From our point of view as a committee, it will be down to the Government to give us direction. We will give it direction on the issues that we believe it needs to address on whether it wants to approach that philosophical debate as part of its review.

Donald MacKinnon's point leads neatly to a question that Mike Rumbles wants to ask. First, however, I bring in Lucy Sumsion.

**Lucy Sumsion:** I have a point of clarification. The people from Sleat are planning to send their slightly revised report to the committee as written evidence. Hopefully, that will be sufficient evidence.

**The Convener:** I will look forward to receiving that. I am sure that all committee members have had a plethora of correspondence on crofting.

I will let Patrick Krause in, but only if he will be very quick. We will then move on to Mike Rumbles.

**Patrick Krause:** Richard Lyle asked whether a big breakthrough could be made other than by deregulating crofts. I refer back to the Shucksmith final report, which came a bit too early in the discussions. What the crofters have eloquently put together is based on Shucksmith's recommendations. I say again to the committee that it should look at that report, because it suggested radical things.

**The Convener:** I am very nervous about solicitors when they give me the evil eye, so I will bring in Murray McCheyne briefly.

**Murray McCheyne:** I am grateful for that.

I am surprised that no one has advocated abolishing landlords' interests in crofts. That is all that I will say.

**The Convener:** On that bombshell, I invite Mike Rumbles to come in.

**Mike Rumbles (North East Scotland) (LD):** My question focuses on the future of Government financial support for crofting post-2020. We all realise, of course, that we are leaving the European Union. A lot of funding goes to crofting support through the common agricultural policy. There are, of course, other issues that also relate to Government support. Under the devolved legislation, the Scottish Government is entirely responsible for supporting agriculture throughout Scotland and, in particular, crofting in the crofting counties. Have you as membership organisations thought about what you want to see post-2020 in a completely new funding regime that is designed for the needs of the crofting counties, and when do you think that you will be able to enlighten us on what those positions are? A huge amount of finance is involved. If your organisations have not thought about that, other organisations have done so and are doing so.

**The Convener:** Lucy Sumsion can speak first. When I was talking on behalf of the committee on Friday, I got waved at me the NFUS policy on funding post-2020. I am sure that you have a policy.

**Lucy Sumsion:** We do.

**The Convener:** Tell us about it.

**Lucy Sumsion:** No—it is in development.

Obviously, agricultural support is fundamental to our members—both crofters and farmers—and to the wider rural economy. We all know about the ripple effect. As Peter Chapman will know, when farmers have money, they tend to spend it, so it goes wider into the rural economy.

Obviously, the union is starting out on that process. We recently produced two initial discussion documents; others will come to pass as time progresses. We are in the very early stages, and we still have to consult more widely with our members, so I would not like to say what the union position is.

Mike Rumbles is absolutely right. It will come down to funding, how we initially secure that from the United Kingdom Government, and how it will be divided up when it comes to Scotland. I was going to say that that will be an interesting burn fight, but that is probably not the technical term.

The union is certainly forming policies, and we will take into account the needs of crofting and our crofting members. I cannot say anything more than that at this stage.

**Mike Rumbles:** I have a supplementary question. There are two methods. Either the UK Government will ring fence the money and give it to the Scottish Government to spend, or it will come in the Scottish block grant. Currently, everything comes through the Scottish block grant. The focus will really be on the Scottish Government's decisions on how it will operate. Do you have any information to suggest otherwise?

**Lucy Sumsion:** That is a fundamental point. My understanding is that our share of the CAP money is roughly 16 per cent. If the money comes through the Barnett formula, that figure will drop to 8 or 8.5 per cent. That is a huge drop. The 16 per cent does not even begin to address the convergence issue that still exists. We have argued that Scotland should get a greater amount of that money anyway. There are real concerns about whether that money will be ring fenced. We need to secure a pot that is similar to, if not maybe bigger than, the one that we currently get. One can always aspire. There are significant concerns about the Barnett formula being used.

**The Convener:** I will confuse everyone. Peter Peacock can come in next. We will go in the opposite order.

**Peter Peacock:** For the purposes of this exercise, I am delighted to say that we do not have a policy on that.

**The Convener:** Does Murray McCheyne have anything to say?

**Murray McCheyne:** No.

**Patrick Krause:** We have policy in construction at the moment. The issue is very complicated, so it will take a lot of discussion. There are some fundamentals. You said conclusively that we are leaving the European Union. The United Kingdom is leaving the European Union—

**The Convener:** I really do not want to get into a discussion about that.

**Richard Lyle:** Go on, Patrick—go for it.

**The Convener:** We could get into philosophical discussions about all sorts of things, but let us avoid that. You are being asked whether you have identified the priorities for funding for crofting post-2020. I would like you to stick to that subject, please.

11:45

**Patrick Krause:** I assume that the question is based on the idea that Scotland may not be in the

European Union then. If we are still in the European Union, things can carry on as they are.

**The Convener:** There will be a review of farm payments in 2020. The Government will need a policy on that, so the priorities are important.

**Patrick Krause:** The European Commission has been pro small units—small farmers and crofters, although they do not necessarily call them crofters in other European countries. When the European Commission came out with its proposals at the beginning of the current round of the CAP, it put forward a lot of policies that were pro small units, which we were pleased about. We will want to see that again after 2020. Whether the proposals are put forward by the Scottish Government or by whoever, we will want to see small units being promoted. It is the general trend across Europe to think that small units have not been promoted enough. That is a fundamental that we really want to see.

Whatever happens, budgets will reduce, so we want to see more targeting of resources and clear outcomes identified. The SRDP probably uses public money in a much more conscientious and accountable way than the pillar 1 basic subsidy scheme, and we would like to see more of that. We would like to see very specific outcomes identified that are good for delivering public goods, as crofters and farmers get paid public money to deliver public goods. That is another fundamental.

**Donald MacKinnon:** We have not discussed the matter recently in our organisation but, over the years, we have discussed various elements of support. Going on recent events, I think that Brexit could present some opportunities that we should not ignore to tailor the support to crofting. A specific example is the new entrants scheme for people who are coming into agriculture, which provides a £50,000 grant—I may have got that wrong—for new entrants but is an all-or-nothing thing. It is also not open to a huge number of people because there is a limited pot of money. Perhaps there is the potential for a smaller amount of money to be provided to more new-entrant crofters. SCF young crofters would certainly support that.

**Lucy Sumsion:** You should bear in mind the fact that, even at the point at which we leave the EU, if we want to trade with European countries we will still be governed by EU rules and regulations. It is unlikely that we will be able to dismantle everything, and we will certainly not be able to do that straight away—it will take a long time.

**The Convener:** Let us move on. Patrick Krause introduced an interesting concept that leads neatly on to what Jamie Greene wants to ask about.

**Jamie Greene (West Scotland) (Con):** Like some of my colleagues, I admit that I am not from a crofting or farming background—I am a town and city boy—so I have found the debate fascinating. One of the themes to have come out of it is that crofters know best and that it is important to listen to people on the ground who are involved in crofting, which is something else that the committee will have to take forward over the next few weeks.

The discussion leads nicely into looking to the future and how we will approach policy. As you are probably aware, there is still a small number of small landholders in Scotland who have the right to convert to crofting, although I was interested to learn that none of them has done so to date. I was also quite interested to see that some new areas have been added to the crofting counties, some of which, such as Arran and Cumbrae, are in my area.

My question is for any one of the witnesses, although we do not need to go right round the table as we are tight for time. Should we be looking at crofting law and policy on small landholders together as part of a single strategy? Also, how can we attract new crofters to the new areas, such as those in my area?

**The Convener:** I do not see anyone jumping to answer that. Patrick Krause, you are usually first into the fray. I ask you to keep it brief, but these are important points.

**Patrick Krause:** I wonder how I can keep what I want to say brief.

We find that a lot of the work that the federation does benefits smallholders as much as it benefits crofters, but we were set up to represent crofters and crofting is a regulated system, so it is fundamentally different from smallholding.

If we are to encourage smallholders or people who are creating new tenancies to create them as crofts rather than smallholdings, the number 1 thing would be to sort out the legislation so that it is simpler. It is good legislation, but it is so complicated that it frightens people. The purpose of crofting is threefold: to protect tenants; to protect landlords; and to protect the land. It is a good system and we believe that smallholders should be attracted to crofting and should want to become part of a regulated system.

**Peter Peacock:** My strong instinct is not to combine them, unless all the smallholders, and there is not a huge number of them, express a desire for that.

One of the things that we are exploring with our members is whether crofting is the only way of creating new tenancies and whether we can satisfy the demand that we think exists in the

Highlands and Islands and throughout Scotland for people to have access to a wee bit of land to do with what they want. A significant number of people are clearly driven by the desire to do things on the land and to feel attached to the land through agricultural production and so on.

How do we cater for that? Crofting is not the only answer; there are other answers and it depends on the particular circumstances and what we are trying to do. I would not automatically combine crofting and shareholding, but we in Scotland have not spent enough time talking about the fact that further attention is required on the question of smallholdings and how we create more of them.

**Murray McCheyne:** I agree with what Peter Peacock has said. Like people around this table today, people who are attracted to crofting have the view that it is a very complex system—and who would vote to come into that, unless people like us are able to say, as we do, that it is not actually that complicated and you just need to take advice and get your head around it? There need to be incentives and it is good that the committee asks that question because there are other issues in rural life in Scotland that contribute to why people do not want to live in rural areas. That should really go back to you guys on the committee, but I do not think that the answer lies in rolling out the crofting system everywhere. That is why I agree with Peter Peacock when he talks about people clamouring for it; Scottish Land & Estates is not clamouring for it. It should stay as is as we go forward.

**The Convener:** Donald MacKinnon and Lucy Sumsion, unless you have particularly opposing views, I would like to leave the point there.

The next question is from John Mason and is on legal matters.

**John Mason:** Gail Ross and I will ask a couple of questions in this part of the session, in which we will wind up and pull things together. From what we have heard today, the real question is about where we—the Parliament or the Government—go from here as far as legislation is concerned. We have already heard something about that, especially from Lucy Sumsion. There is the whole concept that we simply want to review, simplify and modify the law, and that sounds good to me.

We face one or two choices, so I would be interested in the witnesses' views on that. I get the impression that there is broad agreement on the 57, or slightly fewer, technical recommendations in the sump and we could probably move on them fairly quickly without too much excitement. One option would be to do that more quickly and then consider the longer-term policy questions over the next 10, 20 or 30 years.

Alternatively, should we try to put all that together within the next five years? In my opinion, the next five years means the next four years, because we do not want any legislation going through in the final year of the parliamentary session because it gets rushed and is messy and we do not want to be there—you can quote me on that if you like. Does that make it too short a timescale to get the legislation through by, say, summer 2020?

Consolidation has also been mentioned. I have been involved in a consolidation bill before. That just puts the existing law into a different format, but I do not get the impression that that is what we are looking at here, as everybody wants a bit of policy change.

Will the witnesses give me their thoughts on that?

**The Convener:** I do not know who wants to start on that. John Mason has neatly done my job and I should probably step down.

**Lucy Sumsion:** What John Mason summarises is vital. We have not consulted our members on the timing, so these are just my initial thoughts.

Crofting legislation reform is urgently needed. That said, the priority must be the development of good legislation. From our members' point of view, a criticism of the Scottish Parliament is that that is not always the case and that sometimes the legislation that comes out is not good, particularly when it is hurried.

You should put the question about the sump issues to the lawyers when you speak to them because—Murray McCheyne might be able to comment on this—they deal with issues daily. They are pulling their hair out and need those issues to be resolved now.

I will not say one or the other. What you say is pertinent. My concern is that, although we want reform to be done urgently, it has to be done well. There will be a trade-off.

**Donald MacKinnon:** Crofters have to own the legislation as the Parliament goes forward. The Parliament needs to go to the crofters, find out their views and ensure that they have an input into the process. It needs not only to consult the membership organisations but to consult ordinary crofters themselves. That is important.

**John Mason:** Do I take it from that that you would rather wait a bit longer and get it right even if it meant that you were not young any more?

**Donald MacKinnon:** Possibly, yes. The legislation has to be right this time around. If there was any suggestion that it was going to be rushed, we might need to take a step back. It is important that you listen to crofters in the process.

**Patrick Krause:** The Shucksmith report was the biggest inquiry into crofting for 50 years. Crofters were consulted, and they need to continue to be consulted. Participation is vital. If people feel that they are part of something, it will work.

We are of the view that there needs to be a new act. However, whether we have a consolidation act or a new act, the important point is that we have one act. At the moment, we are dealing with an act that has been amended by an act that has been amended by an act so it is really difficult to get your head round any part of the legislation, which brings us to simplification.

The quest for simplified crofting legislation always comes up, but I am struck by the very interesting question: what is simplification? Often what people mean is that they want clarification—that is the fundamental thing that is wrong with the legislation. It needs to be put over in a way that people understand, and that does not necessarily mean using fewer words.

12:00

**John Mason:** Does simpler mean having just the overarching principles and less of the detail, or does it mean something else?

**Patrick Krause:** As I said earlier, the 2010 act is far too prescriptive and includes all sorts of details that do not need to be in it. The act could be simpler if it was more overarching, wider and more general. Clarity is the important thing; not how many words or sections there are, or what refers to what. It needs to be easy to read—I do not know whether you have had a go at reading it, but the way that it is written is really strange. However, that can definitely be sorted in the term of the current Government, as can the formation of a national plan for crofting.

**The Convener:** The critical thing is that the guidance that supports the legislation is made easier to understand.

**Stewart Stevenson:** I have a technical point about parliamentary process. It is forbidden for a consolidation act to change any of the policy. Perhaps we should all bear that in mind when we use that term.

**Murray McCheyne:** That very neatly leads on to my point. If you are changing legislation and bringing in overarching principles, welcome to 20 more years of the Scottish Land Court interpreting what those principles are. I do not hear anybody shouting for that.

If it is codification that we want, that is simple. Unfortunately, it is detailed because it has become a complex system with lots of definitions, but all the potential tweaks that need to happen have



been identified in the sump report, and I venture to suggest that it is not rocket science to make those changes in the legislation. Perhaps we need a crofting reform act in 2017 to deal with the detail, followed by a crofting consolidation act in 2018 or 2019 to bring it all together.

The bigger point that I want to make is that it is worrying—that is the wrong word; perhaps “unusual” is better—that we are talking about legislation being changed, and that is driving the process. I would have thought that legislation is made to deal with a social problem that has arisen, or it is made because the lawmakers of the land want to change social policy. Nobody is talking about changing social policy, apart from one or two ideas coming in, so I am not convinced that there is a need for new legislation, unless we are going off in a completely different direction with the type of high-level legislation that Patrick Krause has talked about.

**John Mason:** Are you saying that we need legislation for the sump report stuff?

**Murray McCheyne:** It would be farcical for everyone to ignore all the ideas that the sump group came up with for where legislation needs to be changed. That would be nonsense.

**John Mason:** We need that legislation, but perhaps we do not need anything else immediately.

**Murray McCheyne:** Unless there is a big idea.

**Peter Peacock:** It is quite unusual to have 57 clear items for a bill specified externally, so Parliament has a clear guide on that. The Government has to decide how to deploy its resources and whether to deal with all 57 items in the sump report or the nine priorities in it. Dealing with 57 amendments will not take an insubstantial amount of drafting time—it might take less policy time, but some policy time will be needed. If the Government decides to do only that, it will have made progress on what people think is a very real agenda, but it would still be making 57 changes—actually, there would be more than that, but they would be based on 57 items—to what is a hugely complex system.

The wider question is whether there is another way of narrowing down and protecting the fundamentals of crofting such as secure tenancy, independent setting of rents and succession, while having more discretion around an awful lot of the detail, potentially by having a decentralised system. You might be able to think about having a decentralised system within the next four years, but rethinking the entire crofting system within four years is a big ask.

**John Mason:** It sounds as though you are leaning towards getting the 57 items out of the way first.

**Peter Peacock:** Part of me says that it would tidy up the system, but we would still be left with a hugely complex system and it would not address the emerging debate about whether we need all this regulation.

Leaving aside the 57 items and the tidying up, the issue is not just whether we need a different legislative framework; it is also how we administer that system. The paper produced by the Sleat crofters is interesting, although it would require a lot of work before it was an implementable system. Nonetheless, it postulates a scenario that sets out a different way of looking at the world; it looks at how to administer what is essentially the same crofting regulation.

The bigger questions are very big ones. It would require a lot of thought to fundamentally change a system that has existed for over 100 years and that was set up for very particular reasons. That is not to say that thought should not be given to that. Ultimately, the Government will have to decide where we should put our effort. Do we put it into tidying up the complex system or into rethinking the system?

**John Mason:** You have highlighted the problems for us.

**The Convener:** The final question is from the deputy convener, Gail Ross.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Thank you. It is very final, unless Stewart Stevenson wants to jump in again.

**The Convener:** He is not going to be allowed to. *[Laughter.]*

**Mike Rumbles:** I will hold him back.

**Gail Ross:** I want to tidy everything up by saying thank you—we have covered a lot of issues and you have certainly given us a lot to consider. It was good to hear differing views as well as quite a lot of consensus on how we should go forward.

We have talked about enacting the recommendations of the sump report but, to wrap up, are there any further priorities that you think a future crofting bill should address?

**The Convener:** To help you all and to focus your minds, I ask you to limit your answers to one priority each. Mr Peacock, what is the most important priority that you would like to bring to our attention?

**Peter Peacock:** If our work shows that legislative change is required to assist the creation of new crofts—we suspect that it might be—my

priority would be about creating new crofts. I would put grazing committees next.

**The Convener:** It was one priority, Peter. [*Laughter.*] You have obviously forgotten your time in the Parliament.

**Mike Rumbles:** No—he has remembered it well.

**Lucy Sumsion:** Peter Peacock raised the issue of whether the legislation is driving the policy or the policy is driving the legislation. The policy has to drive the legislation, but the legislation is so huge that it has to be looked at.

**Donald MacKinnon:** It is difficult to pick out one priority, but I agree with Peter that the creation of new crofts is the most important thing to look at.

**Patrick Krause:** Because the others have already said my priority, I do not need to say it, so I will say something else. The crofting asset mapping participatory work within the communities is absolutely fundamental to taking forward anything with crofting.

**Murray McCheyne:** That is not a legislative priority; it is a funding priority.

**The Convener:** I will accept a funding priority.

**Murray McCheyne:** I agree with Patrick Krause's point. I have already given you a priority about owner occupation. If I had to pick another one—I am not necessarily pushing this from an SLE point of view—common grazing is an issue.

**The Convener:** As I promised that I was not going to let Stewart Stevenson in, those are all the questions that we would like to ask you. If there is any information that you feel we ought to consider as part of what we are doing, please correspond with us through the clerks and we will make sure that that information goes out.

Thank you all for coming and for giving evidence. I particularly thank everyone in the room for making this a conversation and an inquiry about actual problems rather than personalities. It is important that we keep it that way. Thank you for your time.

That concludes the meeting. Our next meeting is on 9 November, when we will hear further evidence on crofting from a panel of experts on crofting law.

*Meeting closed at 12:10.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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