



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Rural Affairs and Islands Committee

Wednesday 24 September 2025

Session 6



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**Wednesday 24 September 2025**

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**RURAL AFFAIRS AND ISLANDS COMMITTEE**

**26<sup>th</sup> Meeting 2025, Session 6**

**CONVENER**

\*Finlay Carson (Galloway and West Dumfries) (Con)

**DEPUTY CONVENER**

Beatrice Wishart (Shetland Islands) (LD)

**COMMITTEE MEMBERS**

\*Alasdair Allan (Na h-Eileanan an Iar) (SNP)  
\*Ariane Burgess (Highlands and Islands) (Green)  
\*Tim Eagle (Highlands and Islands) (Con)  
\*Rhoda Grant (Highlands and Islands) (Lab)  
\*Emma Harper (South Scotland) (SNP)  
\*Emma Roddick (Highlands and Islands) (SNP)  
\*Evelyn Tweed (Stirling) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Gary Campbell (Crofting Commission)  
Jim Fairlie (Minister for Agriculture and Connectivity)  
Joe Kirk (Scottish Government)  
Andrew Thin (Crofting Commission)

**CLERK TO THE COMMITTEE**

Emma Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Affairs and Islands Committee

Wednesday 24 September 2025

*[The Convener opened the meeting at 09:13]*

### Subordinate Legislation

#### Free-Range Poultrymeat Marketing Standards (Amendment) (Scotland) Regulations 2025 [Draft]

**The Convener (Finlay Carson):** Good morning, and welcome to the 26th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I ask members to please ensure that all electronic devices are switched to silent.

Agenda item 1 is consideration of subordinate legislation. I welcome to the meeting Jim Fairlie, Minister for Agriculture and Connectivity, and the following Scottish Government officials: Darren Cormack, policy manager, livestock products; James Hamilton, lawyer; and Joe Kirk, poultry unit branch head. I invite the minister to make a short opening statement.

**The Minister for Agriculture and Connectivity (Jim Fairlie):** Thank you, convener, and good morning.

Thank you for inviting me to speak to the draft Free-Range Poultrymeat Marketing Standards (Amendment) (Scotland) Regulations 2025. This draft instrument amends European Commission regulation 543/2008, on the marketing standards for poultry meat, with regard to the 12-week derogation period that is allowed in the event of a housing order being implemented. The EC regulation lays down provisions relating to the “free range” farming method, in which, in order to classify as free-range poultry meat, the birds must have continuous daytime access to open air runs. At present, the poultry meat marketing standards regulations allow a derogation for poultry meat to be marketed as free range for only the first 12 weeks of any housing order that is introduced. Following that, the labelling of poultry meat cannot refer to “free range” and must be changed. The instrument that we are discussing will remove that 12-week limit and allow free-range producers to label the meat as such for the full duration of a housing order.

09:15

You might remember that, last year, we amended the egg marketing standards regulations by removing the 16-week derogation so that eggs could continue to be marketed as free range, regardless of how long hens had been housed under temporary housing restrictions. This instrument amends the regulations for free-range poultry meat in the same way, ensuring a consistent approach across the free-range poultry meat and free-range egg sectors.

Members will be aware from the committee papers that the United Kingdom Government and the Scottish Government consulted on this jointly, and the results of that consultation show that the removal of the 12-week limit on the derogation is the preferred route for the industry. There were 79 responses in favour of the change, including from a significant Scottish poultry meat producer that is part of the main supply chain.

Although the sector in Scotland is evolving as a result of recent investment, with a current capacity of around 4.8 million birds across poultry meat farms, there are currently no commercial free-range poultry production premises in Scotland. Nevertheless, in progressing with this change, we will be in line with the rest of the UK, and the move will also future proof the legislation and perhaps, through reducing costs during housing orders, provide an incentive for any potential Scottish free-range poultry meat producer to commercially produce free-range chicken in Scotland. Not making the changes could further disincentivise any future free-range poultry meat production in Scotland, because of the additional requirements, and costs, during housing orders.

Outbreaks of avian flu in recent years have unfortunately required housing orders to be put in place in the UK. In 2021 and 2022, they covered the whole of the UK, when they were extended to 22 weeks, thereby exceeding the derogation periods for poultry meat and eggs. In 2022 and 2023, England, Wales and Northern Ireland put in place a 23-week housing order, which also exceeded the derogation periods. Although the current risk of avian influenza in poultry is low, it is expected that the UK might face outbreaks of the virus in the future. As such, a long-term approach to the issue is the most practical route to take, and, as I have mentioned, it is important that we keep the sectors consistent.

In essence, the proposed change is small but practical in allowing poultry meat to be labelled as “free range” for the full duration of the housing orders that are put in place for the birds’ health and welfare. Current legislation already allows that to happen for a substantial period of 12 weeks.

I hope that those remarks are helpful in setting out the rationale for the instrument, and I am happy to answer members' questions.

**The Convener:** Thank you very much, minister. I call Rhoda Grant.

**Rhoda Grant (Highlands and Islands) (Lab):** We welcome the instrument, as it could encourage free-range breeding in Scotland. However, how will you ensure that chickens that are not bred as free range do not come under these regulations and end up being marketed as "free range", because of the derogation? How will you ensure that the derogation cannot be used to mark chickens that are normally reared in barns as "free range"?

**Jim Fairlie:** Those birds would not already have free-range status; under this instrument, the birds would already need to have that status. This only works when a housing order is put in place by the chief veterinary officer. Somebody with indoor chickens cannot claim that they are free range if they do not already have that free-range status.

**Rhoda Grant:** So, if someone applied for such status when a derogation was in place, there would be checks and balances to ensure that the chickens in question would, under normal circumstances, have been outside.

**Jim Fairlie:** Even if a housing order were in place, they would not be able to apply for free-range status unless they had all the other things in place that they would need to have in place to be a free-range producer. They would not be registered as a free-range producer at that point.

**Rhoda Grant:** Okay, and checks will be made at that point.

**Jim Fairlie:** Yes.

**The Convener:** I call Tim Eagle.

**Tim Eagle (Highlands and Islands) (Con):** I hope that you can hear me. Apologies that I cannot be there this morning quite yet.

Minister, I welcome this; it is brilliant. I take your point that it is not a massive issue in Scotland at the moment, but, back in November 2024, I think it was, we introduced the same approach for free-range egg marketing, which was completely practical and absolutely made sense for the industry. Therefore, I think that people will welcome this.

The two points that I pulled out from some of the consultation responses are about consumer confidence around the free-range label and having prompt outdoor access in the event of the lifting of any restrictions around avian influenza. How have you taken those points into consideration? I do not think that consumers have anything to worry about

with this measure—it is a practical step—but I would be interested in your thoughts.

**Jim Fairlie:** I agree. I seem to remember that we had a similar conversation when we were talking about the derogation for eggs, so we had a discussion before I came to committee about how we would be able to give that assurance to consumers. So far, we have seen that supermarkets are keen to make sure that people understand what is happening with their food supply, because it is in their best interests to do that.

I could be wrong, but I think that we talked previously about whether we should be able to compel supermarkets to tell people that there is a housing order in place. We have looked at whether that is feasible, but at the moment, it is not necessary because supermarkets and retailers are very comfortable with the fact that if there is a housing order in place, it is in their best interests to make sure that consumers know what is happening. We do not have any concerns on that point at the moment.

I am sorry, but if there was a second point, I have missed it—I apologise.

**Tim Eagle:** That is fine, minister.

**The Convener:** I have a follow-up question. With egg marketing, were you aware of any issues with supermarkets not making it clear to consumers that free-range eggs could not currently be sold as such because of a housing order?

**Jim Fairlie:** No. Joe Kirk and I were discussing that just before we came in. In the early days—Joe will correct me if I am wrong—officials went out to see what supermarkets were putting on their eggs to make sure that the labelling was compliant with the requirement that the information is relevant and not misleading. If there was a housing order in place, the label would say that the eggs are from a free-range flock, but that the birds were currently housed due to avian flu, or words to that effect—I remember seeing that in Tesco.

From our point of view, there are no concerns that supermarkets would not continue to have the view that it is in their and the consumers' best interests to understand exactly what is going on at any given time.

**The Convener:** Other supermarkets are available.

**Jim Fairlie:** Other supermarkets are available.

**Ariane Burgess (Highlands and Islands) (Green):** I have a couple of questions. We do not have any free-range producers at the moment, but if we were to have them, have you given any consideration to introducing measures to protect

poultry welfare while free range is being denied; for example, providing veranda access or increased space and enrichment indoors?

When animals have to be housed, we do not want them to be housed in awful conditions where they are crammed in. Will we try to ensure that the housing allows animal welfare conditions to be kept at the high standard that we have in Scotland?

**Jim Fairlie:** I have not given any consideration to that on the basis that we do not have anyone in this country right now who is doing free-range poultry meat. There might be measures in England that Joe Kirk is better versed in and can tell you about.

**Joe Kirk (Scottish Government):** You are absolutely right—while a housing order is in place, when birds have been used to getting free-range access, there is always a concern that denying them that access will put increased stress and pressure on the birds.

In relation to egg production, we have put out a lot of communications to producers about being proactive and thinking about such situations beforehand. There is no requirement for them to add on verandas, but we are saying that the best practice would be to consider providing verandas and lots of enrichments indoors, as well as increasing stockmanship in order to walk the houses far more frequently during housing.

If we had producers of free-range poultry meat, we would apply what we have done with the egg sector, so that the two are complementary. We would hope that we would be able to learn from what we have done in the egg industry and apply it to poultry meat producers.

**Ariane Burgess:** It sounds as though it is a guideline rather than a requirement to look after those animals, but I am grateful that you understand that a shift in conditions could be shocking to sentient beings.

I have another big picture question. The housing order had to be issued because of avian flu, but we also have zoonotic diseases. The international scientific task force on avian influenza said that a

“reassessment of the nature and sustainability of poultry production systems is required.”

I know that the SSI will be enacted to handle a symptom, but what is the Government doing and what is happening in the UK to look at what we can do to address avian flu at a deeper level? How do we tackle zoonotic diseases?

**Jim Fairlie:** I am not sure how we tackle zoonotic diseases in a transient wild bird population. There needs to be an understanding that we have transient and migratory bird

populations, which is why they are rises in avian flu at certain times of the year. I do not know how you eradicate that in the wild, if that is your question.

**Ariane Burgess:** I think that is worth looking at the food system.

**The Convener:** I am sorry, Ariane, but we are moving off topic. I do not think that it is fair to ask the minister questions about the broader implications of avian flu.

**Ariane Burgess:** I will take it up with him directly.

**Emma Harper (South Scotland) (SNP):** If we are looking at labelling for supermarkets, will the SSI have any impact on restaurants, supply chains and chain restaurants?

**Jim Fairlie:** The same principle will apply. If someone wants to market their product as free range because that suits their business model and it is the kind of model that they work in, they would have exactly the same concerns as anyone else. If they want to continue to sell a free-range product when there is a housing order, it is in their best interests to ensure that their consumers know that.

**The Convener:** The minister has suggested that there is no free-range meat production in Scotland at the moment, but you referred to the work that was done on free-range eggs. Was any consideration given to a pre-application process, under which businesses could apply to market their eggs as free range in the event of an avian flu lockdown? For example, there could be inspections of the conditions in sheds or buildings that chickens or hens that would normally have been outdoors had been moved into in the event of a housing order. Those inspections could ensure that the conditions were of a standard that would allow businesses to market their eggs as free range under the legislation.

**Jim Fairlie:** I am sorry, convener, but I am being a bit dense. I do not understand the question.

**The Convener:** Let us say that I had a farm and my chickens were generally outside, but the housing that I had for them was far from adequate—maybe I had only a few sheds, which would make it difficult to allow them to have free range status, whether there was a housing order or not. Would there be any benefit to having a pre-application process so that businesses that could maintain standards at a certain level could apply and those that do not have any sheds could not?

**Jim Fairlie:** I will defer to Joe Kirk.

**The Convener:** Joe looks as though he might understand the question that I am trying to ask.

**Joe Kirk:** I think that I know what you are getting at. If someone is already a registered free-range producer before a housing order comes into effect, de facto, they would be allowed the open-ended derogation. If someone has not been registered as a free-range producer at that point, they will not be allowed it, because their birds will never have had outside access.

It is not fair for people who already have stock on the farm—and whose birds have been getting fed, reared and looked after as free range—to compete with somebody whose birds are going straight in during a housing order, when their birds have never got outside and are never likely to get outside during an open-ended housing order.

With regard to your question about a pre-application process for somebody who currently has empty houses, unless they were registered and inspected prior to the housing order, they would not be allowed to avail themselves of that exemption.

09:30

**The Convener:** If I have 40,000 hens outside but I have adequate and satisfactory housing for only 20,000, and then there is a housing order and I squeeze all of those 40,000 in—

**Joe Kirk:** No—it does not work like that.

**The Convener:** If there was a housing order but I had accommodation with suitable conditions for only half the number that I had outside, how would you deal with that?

**Joe Kirk:** You would never have been allowed to register in that case. You have to have sufficient indoor and outdoor accommodation—

**The Convener:** —in the event of an outbreak. That is absolutely the answer that I was looking for.

As there are no further questions, we move to agenda item 2, which is the formal consideration of a motion to approve the instrument. I invite the minister to move motion S6M-18747.

*Motion moved,*

That the Rural Affairs and Islands Committee recommends that the Free-Range Poultrymeat Marketing Standards (Amendment) (Scotland) Regulations 2025 [Draft] be approved.—[*Jim Fairlie*]

*Motion agreed to.*

**The Convener:** Is the committee content to delegate authority to me to sign off a report on the instrument?

**Members indicated agreement.**

**The Convener:** That concludes consideration of the instrument. I thank the minister and his officials for attending.

I suspend the meeting to allow for a changeover of witnesses.

09:31

*Meeting suspended.*



09:38

*On resuming—*

## **Crofting and Scottish Land Court Bill: Stage 1**

**The Convener:** Our next agenda item is an evidence session with the Crofting Commission on the Crofting and Scottish Land Court Bill. I welcome to the meeting Andrew Thin, who is the chair of the commission, and Gary Campbell, who is the chief executive. Thank you for joining us.

As usual, we have a lot of questions to get through, so I ask members and our witnesses to be as succinct as possible in their questions and answers, and I remind everyone—not that they will need reminding—that we have a gentleman here to operate the microphones.

I will kick things off by seeking your views on section 1 of the bill, which revises the duty on crofters to allow a third, distinct option for croft land: environmental use. At the weekend, a delegation of committee members visited Skye, and concerns were expressed about the potential for the term “environmental use” to be misused, given that it is so broad. What is your view on what that provision might achieve? Can you see any pitfalls with such a broad definition?

**Andrew Thin (Crofting Commission):** I will kick off. The concerns are legitimate. We need to understand the interplay between the legislation and the policy plan that the Crofting Commission is required by law to put in place. That interplay is analogous to the interplay between planning legislation and the local plan.

It is sensible for the legislation to describe things at a fairly high level and to leave a degree of flexibility, but that will work only if the Crofting Commission has a robust policy plan that sets out very clearly what its policy is on use for environmental purposes, or whatever phrase ends up being used in the bill. As long as the Crofting Commission has a robust policy plan in place, we will be fine. We will then make decisions against that plan, and the Scottish Land Court will hear appeals against not just the legislation but the policy plan. The policy plan is central, but as long as we get that right, the provision in the bill will work fine.

**The Convener:** Does the bill need to be tightened to give a clearer definition of the Government’s intended outcomes? You mentioned the need for flexibility. Could such clarity be provided in guidance?

**Andrew Thin:** I do not think that that needs to be clarified in the bill. It could be—that is a matter

for the Parliament—but I do not think that it needs to be.

I will hold up my hand and say that I do not think that the commission has done a particularly good job on its policy plan previously, but we are now going through a comprehensive programme of modernising policy. As long as the commission does its job properly on the policy plan, I do not think that the bill needs to be changed.

**Gary Campbell (Crofting Commission):** As Andrew said, what “environmental use” means in its broadest sense is a matter for the Parliament to consider. However, the bill says:

“‘environmental use’ means any planned and managed use”.

From my perspective and at an operational level, that covers it well enough. We will be able to apply that through our policies. Therefore, I am quite content with the level of detail that is provided in the bill.

**The Convener:** We heard about an example that involved a croft that appeared to have been abandoned. However, the crofter had a website that described a range of different environmental activities that they were involved in on the croft. It was clear that what was on the website was not real. Indeed, I think that I would go so far as to suggest that it was probably created by someone who used an artificial intelligence programme. However, it could be argued that that was planned, and it could also be argued that it was managed, because, at some point over a four, five or six-year period, someone had planted a couple of trees. In effect, though, the croft had been abandoned.

How will the definition that you referred to ensure that someone has planned and managed their environmental use, without the Crofting Commission having more boots on the ground so that it can actively investigate such claims? How will that be achieved?

**Andrew Thin:** Forgive me, but I am not going to write the policy plan right now. What the legislation says is the starting point, not the end point. It says what the Parliament intends. Every five years—it is a five-year cycle—we must spell out in contemporary terms what we think that means in policy terms.

Because this is a difficult area, I do not doubt that there will be challenges. The Land Court might well have to rule on the matter, but that is helpful. In that respect, the situation is no different from the position under any other legislation. A ruling by the Land Court creates case law, which strengthens the Parliament’s position.

I think that the environmental use provision is workable. I do not want to give you the impression

that I think that it will be an easy process, but it is not easy for members, either. If you were to try to spell this out in multiple sentences in a piece of legislation, that would put you in the position of writing the Crofting Commission's policy into law, and I do not think that that is necessary.

09:45

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I saw the same croft as the convener did, and, without referring to it too specifically, it raises a few questions in my mind that have also come up in other contexts.

It would be fair to say that most crofters are quite enthusiastic about finding ways of including care of the environment in legislation and giving it due recognition. I suppose that, as the convener has outlined, some of that comes down to enforcement and some of it comes down to whether the enforcement procedure is more than a desktop exercise when it tries to judge between active environmental management and abandonment. Would it be fair to say that one of the questions that has been asked of the commission in the past is about how it ensures that more crofts are visited and seen rather than judged from afar?

**Gary Campbell:** I will watch how I say this and not be too specific. I am aware of a croft on the west coast of Scotland that has what is, in effect, an artificial intelligence-generated website. The commission is also aware of it, and it has gone through a process with that croft, which might or might not be the same one that you saw, but it is a similar scenario. We received an official complaint from the crofting community and we had to investigate it, which we did. That croft, which seems to be similar to the one that you are talking about, will be the subject of a report from the local rural payments and inspections division office, which we have used for many decades as our boots on the ground. It will look for further evidence of the environmental uses that are being claimed.

In another example, this time from the Western Isles, we had a complaint from a member of the public to say that they were on holiday in the Western Isles and they were disgusted to see an abandoned croft in the Uists. They asked what were we going to do about it. However, what they thought was an abandoned croft was not abandoned; it was an area of land that had been put aside through an approved scheme. The person was receiving compensation from another Government agency because a rare orchid was growing on that land. We wrote back to the person and said that they had made a mistake, and they were delighted that the croft was being used for such a thing.

That second example is an example of what we do and what we would look for. As Andrew Thin said, we do not want to write policy here today, but we would look for further evidence of the crofter's management scheme, what their plans are for the future, how they will be monitored and measured, and what the environmental outcomes are. That is why I am content that the term "planned and managed use" in the bill will allow us to address all those issues through policy. I hope that the examples that I have given have shown that we are aware of all these situations and that we are addressing them.

**Andrew Thin:** I want to address the wider point about enforcement that Alasdair Allan made, because you are absolutely right. There are 21,000 crofts in Scotland, and with the best will in the world, even when the economy and budgets are growing fast, we cannot send someone out to inspect 21,000 crofts—it cannot be done.

The Parliament has already put in place a system of annual notices where crofters are required by law to confirm annually that they are living within 30km of their croft and what they are using it for. The way into this is through enforcing that annual notice. The commission has not previously enforced the annual notice, but it needs to and it will. We are switching to a kind of self-reporting system, if you like, which is what the Parliament intended when it put the annual notice system in place some years ago. A crofter needs to confirm that they are fulfilling their duties, including that, if the use is environmental, it is in line with whatever the policy says. If someone completes an annual notice falsely, that is fraud and it is a serious offence. The disincentive to falsely report is therefore high.

We will begin that system this autumn and winter, and we will see how it goes, but I am confident that the right way to enforce crofting duties is by using the tools that the Parliament has already given us, rather than by trying to invent something new.

**Alasdair Allan:** I do not want to jump ahead too far and go into enforcement, but it is important to put on the record that most crofters are doing the right thing, and the reason why those who are doing the right thing get angry about the issue of abandonment is not because they feel that their neighbours are making money out of it; it is because, ultimately, if a township is denuded of people who are active crofters, the collective aspect of crofting becomes impossible in that township.

On the idea of environmental use, the key word seems to be "managed". You have touched on this, but do you have an idea, even provisionally, of what that word might mean? The land has to be

put to environmental use, but that has to be managed use.

**Gary Campbell:** We are looking at that. We are not doing anything specifically or in too much detail at the moment but, with our policy team, each of the proposals in the bill has been worked through to consider what it means for our day-to-day work and what policy we will need. We have worked closely with the bill team, including Bill Barron and Michael Nugent—who, I have to say, have been tremendously supportive throughout the entire process—on the potential timing should the bill go through the Parliament and be passed as an act, and what that means for us. I assure you that, although we do not have all the detail at the moment, by the time that the provision comes into legislation, should that be the case, we will be ready to hit the ground running with it.

**Andrew Thin:** I think that the term “managed” is clear to most people. It means that there is a plan, that there are clear milestones and outcomes, and that performance measurement systems are in place. Those are the bones of what “managed” means, and, as Gary said, we are in the process of turning that into policy.

The thing that is, absolutely rightly, worrying crofters is that people will abandon land and then say that that is environmental use. It is clear from the way in which the bill has been drafted by the team that abandonment is not environmental management and that such management must be planned and managed; there must be something on paper that is clear and that has milestones and targets. NatureScot has quite a lot of good thinking on this sort of stuff already, so I am pretty confident that we can put in place a policy that will actually be quite tough. The idea that people can just sit on their hands and say that that is environmental management is a non-starter.

**The Convener:** It would be fair to say that there have been universal concerns about the Crofting Commission’s enforcement. That is not about whether the commission has the teeth or legislation to back up the actions that need to be taken; it is about how often enforcement takes place and issues with capacity. We have discussed environmental use and the potential for crofters to have to put together plans. In relation to contentious areas where land has not been managed or has been abandoned or rewilded—that is probably the best way to put it—does the bill provide the opportunity for you to improve your capacity as a regulator when you have those additional requirements and tricky areas relating to whether land is abandoned or being managed?

I understand that some of the Crofting Commission’s responsibilities for registration are being handed to Registers of Scotland, so some capacity will be freed up. However, this time next

year, if the bill becomes an act and you hit the ground running, will you have the capacity to ensure that environmental use is policed properly?

**Gary Campbell:** Yes. To give a bit of background, as most of you will be well aware, three or four years ago, which was before my time at the commission, it asked for and received quite a boost to its staffing numbers. It was much needed, because it was identified at that time that the commission simply did not have the resources to do what was being asked of it by the Parliament. As a result, since then, as I am sure that MSPs in the crofting counties will know, the backlog of cases has been almost completely dealt with and matters are going through much more quickly than they have done for many years. We are therefore already re-profiling staff to look more at the enforcement of duties. As Andrew Thin said, we have a programme of following up people who did not fill in last year’s annual notice; it is like a warning shot, saying, “Please do as you are being asked.”

I am content with the environmental use duty, because it is a useful addition. Under the current duties, crofters have to reside near, cultivate, maintain and not neglect their croft. Any other purposeful use has to be approved by the landlord or the commission. The bill will nicely add environmental use to those duties, and environmental plans will not have to be looked at separately. People already come to us with those for their crofts—the orchid case is a good example of that. Instead of having to go to their landlord—in that case, a community landowner—to get permission or, if the landowner demurs, to come to us for our permission, that will be given automatically. From my perspective, operationally, the bill will clarify matters and allow us to go about the work that we are already doing.

You are correct that, in the past, because the commission did not have the necessary resources, most of our effort was placed on regulatory applications. People want to get on with their lives, and the ultimate enforcement was left as a secondary thing. That is not the case now, because we have listened. Like the committee, we have been around the crofting counties; we have listened and we are now taking action. I am certainly getting positive feedback on what we are doing; it has been well received. I hope that all this will mean that we will be able to have the resources. However, if we do not, we will come back and ask for some more help.

**The Convener:** We will move on to enforcement duties. I know that we have touched on them, but Alasdair Allan has a further question.

**Alasdair Allan:** As has been touched on, reporting is crucial in all of this. Recent crofting legislation has changed the people who are tasked

with reporting on non-compliance. Will the bill improve the process of reporting on non-compliance and remove some of the need for neighbours to describe the activities of their neighbours, which is obviously not an ideal or workable situation?

**Andrew Thin:** I think that the bill will be helpful in that. However, let us be clear that there is a difference between alleging something and providing evidence. There is an argument for asking why we should set out who can report someone for breaking the law. Why cannot we all report someone for breaking the law? However, to make the system work, what really matters is that people who report breaches—I note that they are breaches of the law—do so with evidence. Otherwise, it is simply an allegation, which can be very difficult, to be frank.

People have property rights. We already require the re-let of one croft a week. If we are going to take people's property rights away, we need robust evidence. That is key.

**Alasdair Allan:** Resource has been mentioned, too. Are there provisions in the bill that would free up resource and allow the commission to concentrate on the task—it is not your only task but, ultimately, it is part of your responsibility, as you have described—of taking tenancies off people if a croft is abandoned? Are there provisions that would free you up to do some of that?

10:00

**Gary Campbell:** Yes. I am very much in favour of the bill in general, because it tidies up an awful lot of areas that were problematic and were probably not best thought out when they were written. Also, some things from the Crofters (Scotland) Act 1993, which is almost 35 years old, no longer make sense in today's world. Tidying up things that take up a lot of our time will allow us to reprofile the staff, as you said.

We have various opportunities going forward. Quite a number of staff have intimated to me that they will probably retire over the next few years, although we cannot take that as read. Again, that allows us to look at the commission's structure, who is best placed to be where and how to replace those jobs within the existing budget and perhaps do something slightly different.

We have quite a lot of operational plans going on, which come from the policy modernisation that Andrew Thin talked about, and that goes through to looking at the impact on policy in detail. You will see from the financial memorandum to the bill that there has been extensive discussion with the sponsor. I again thank Michael Nugent and Bill Barron for taking the time to go through it in such

detail, so that we came out with the right outcome in terms of staff.

Again, I am giving my view. When the Crofting Reform (Scotland) Bill was passed, the approach was deemed to be cost neutral. That put the then new Crofting Commission in a position where it simply did not have the resources to do what it had to do, and that was rectified a few years ago. We were conscious that we did not want to do that again. I am quite content that, as things stand, we will be able to do what is proposed.

There is still the scenario that, as we have said, we cannot go and physically inspect 21,000 crofts every year to check that people are telling the truth. We operate on the basis that people are telling us the truth. In terms of serious breaches, there is no issue with people reporting their neighbours, because they do tell the truth. As Andrew Thin said, we are terminating a tenancy a week at the moment where people are not behaving, for want of a better word, so that work is happening.

One specific good thing in relation to the duties is the removal of the requirement for a grazings committee to do a report on the neighbours every so many years. Perhaps everything is going fine, but a grazings committee could be picking on folk. That is being taken out, which is a good thing.

Under the existing legislation, anyone can report anything to us, but we have a duty in legislation to follow up only specific reports. A croft in Skye was reported by somebody who was not one of the people who are listed in the legislation, and we, as the commission, decided to follow that up, because sufficient robust evidence was given at the time to do that. On the face of it, it looked as if there was a serious breach in terms of residency and use. As I said, that croft will now be inspected by our colleagues in RPID.

The bill is sufficient. It tidies things up nicely and leaves us with the powers to do what we need to do.

**Alasdair Allan:** I have one more question on that issue. Section 2 removes the 28-day time limits when a crofter applies for consent to use their croft for another purposeful use or when a crofter applies for permission to be temporarily absent. Why is that being changed? It is the Government's decision to write the legislation, but what is your understanding of why that is in there? Will that be useful to you or to the process? Will it help to deal with things promptly? Does that just give you more time?

**Gary Campbell:** The bill will give us slightly longer when that is necessary. A good example would be where somebody wants to use their croft as a glamping site. If the landlord says no and the person applies to the commission, we have less

than a month to decide whether that is useful. At that point, we would expect the person to come and say what other permissions they would need—as in planning permission, potentially—for such a thing. We would like people to come prepared with that information, but, if they do not, we will not get the decision done in 28 days.

The bill just removes from the process a random number that was put in at some point when, to be honest, things such as glamping sites were not considered. At the time, the provision would have been for someone who wanted, for example, to keep horses instead of cows, and we would say, “Yes, that is fine,” in 28 days. However, we have moved on, and the bill will give us flexibility.

As I said, as a balance to that, we also have a policy. If someone applies to the Crofting Commission for anything and bits are missing or we feel that we need bits of information, we go back to them and give them 28 days to come back with that information. If they do not, we close the application and move on. That policy was brought in just before I joined, by the board and our previous chief executive, who is in the public gallery. It has made a huge difference to the expectations of crofters and their agents and to what we will do. It has also contributed hugely to cutting the backlog. The bill takes away an unnatural term being placed on the process.

**Emma Harper:** Dr Allan asked about additional resourcing and workload. In what other ways will expanding the list of people who are able to report suspected breaches affect the relationships between crofters, landlords and sub-tenants?

**Gary Campbell:** That will simply formalise things that we are already doing. For example, anyone—whether that is a neighbour or someone else—can report anything to us. In many cases, it is up to us to decide what to do with that report. That can be a resource issue. To be honest, as we have already discussed, the commission’s main focus until recently has been on regulatory applications.

To be frank, if a report involved somebody whom we were not required under legislation to follow up with, a lot of the time we did not do so. However, expanding the number of people who can report is a good thing; I welcome that. It also means that crofters—people who are in breach—know that other people can report issues.

It is because we are freeing up things that I think that we will have the resource to deal with this. As Andrew Thin said, the evidence is really important. That is what we look for. A lot of reports go nowhere—even those that we must follow up—because the evidence simply is not there or it is seen as spurious.

**Emma Harper:** I know that we will come on to discussing creative ways of getting evidence, including through digital means. Your earlier point about AI was quite interesting. How do we ensure that the evidence is exactly what you are saying that it should be, that it shows where the croft is located and that it helps people to understand what the breaches are?

**Gary Campbell:** There is a process, which begins with telling someone that we think that they are in breach and asking them to provide evidence to the contrary. A lot of the time, they are able to provide that evidence and set out what the situation is. Sometimes, people might put up their hands, and we will ask them what they are going to do about it. We will work with them to find a way around the breach.

In situations where somebody might lose their croft, or if they are an owner-occupier crofter, and we are going to let the croft from under them, they will become a crofting landlord, and then all sorts of other legislation comes into play, as Andrew Thin said, especially on human rights and property rights. That is when the RPID staff and agents come into play. They are the agricultural experts, and they know exactly whether something has been used within the terms of the law. They give notice that they will physically visit the place, then inspect it, speak to the people and the local grazings committee and make a decision.

At the end of the day, my main concern is ensuring that whatever decision we make does not end up in the Scottish Land Court at a cost to the public purse. There is an incentive in the decision making all the way through to ensure that we do not end up there.

I am quite content that the process is such that, when we get to the sharp end, we have enough tools in the box to ensure that we get the correct evidence. As I said, the bulk of the stuff is organised between the crofter, the commission and the landlord, and it is up to them to sort it before it gets to that stage.

**Andrew Thin:** I will make two quick points. On evidence, we are modernising the policy plan, which will be significantly more detailed. That frames the evidence. Let us take the requirement to be ordinarily resident. If the policy plan is crystal clear on what being ordinarily resident means and what evidence for that looks like, that defines what evidence is required to prove it. We need to get the policy plan right with regard to defining evidence, and I think that it will massively help crofters once we have done that.

My other point is much wider. There is a legitimate question about who can report breaches. In other aspects of life, if someone breaks the law, anyone can report them. In this

situation, if someone breaks the law, anyone can report them, but the legislation sets out that, if someone reports a breach, the Crofting Commission must investigate.

That comes back to the point about evidence. At the moment, people report breaches without a shred of evidence, but we must investigate. There is a section about vexatious complaints, but the legislation needs to be tidied up.

**The Convener:** In relation to Emma Harper's question, if there are multiple breaches, will that have an adverse or a positive effect on the commission's workload? There is a good word for what we are talking about: "clyping" on your neighbour. At the moment, complaints are almost filtered, in that named groups are allowed to raise a complaint. For example, a common grazings group could receive a complaint, but it would probably inform the commission only if it thought that the complaint was valid. That level of scrutiny would be gone—66 crofters could all complain about one another. Have you got anything in place to ensure that that will not make things worse for you? You have set out how the changes will make things better, but is there the potential for your workload to increase?

**Gary Campbell:** The best way to put it is that a lot of that sort of thing goes on already. As Andrew Thin said, lots of people complain about things, but it might simply be a generational dispute.

If there is an effect on the commission, it will be an increase in paperwork from the number of regulatory applications and notifications. On the back of the work that we are doing—for example, we ask people who did not fill out an annual notice whether they are actually resident in the croft—we are starting to see an uptick in the number of assignation applications and notifications in relation to who owns crofts.

I am pretty sure that the existing set-up for dealing with complaints will continue to include the filtering process and will be okay. If anything, the number of regulatory applications will increase. We are already speaking to our sponsor division about a new case-load management system, because there are some security issues with the current system's underlying software, which will soon be out of date. That will bring the system up to date by 10 years and should help to streamline processing and allow staff to take on more work.

Looking at things as a whole, I am quite content that we will be able to cope with the bill's provisions, certainly in the short term.

**Andrew Thin:** I will add a quick but probably not particularly helpful point. The bill team ran an excellent public consultation last summer, and I went to several events miles away—way out in the Western Isles, on Barra, on Tiree and in all sorts

of other places. At a couple of those events, there were really interesting discussions about whether we need a system of reporting at all. In other walks of life, we assume that anyone can report a breach of the law, so why do we spell this out at all? Those discussions were really interesting.

**Ariane Burgess:** We have been talking about how the bill changes how breaches of crofting duties can be reported and those duties enforced. I am interested in how the reforms will affect crofting communities and improve fairness in enforcement. You have touched on that, and the convener talked about clyping, but is there anything else that you want to mention?

**Andrew Thin:** Forgive me, but it is quite difficult to completely disentangle the reforms from the commission's programme of very significant changes, which is already under way. I am determined to drive through those changes. There is no question but that the commission has not been as firm on crofting residency duties as it could have been and as it will be over the next few years. The consequence of that is that people with a croft have been allowed to live in Glasgow or New York, which many people would regard as unfair. There are those who have been allowed to not bother using their crofts, and people would regard that as unfair, too. We can sort those things with the powers that we already have, and we will do so, and it might become a little bit uncomfortable for people as we change gear.

10:15

The bill will speed up the process of enforcement. The bill team has done some really excellent thinking on the following question: given that enforcement is resource intensive and publicly expensive, how do we speed that up while still protecting people's property rights? That is an important balance to strike, and the bill team has done a really good job in that respect. However, the bill will not change things; we must use our existing powers properly, and we will. The bill will allow us to do that in a more streamlined way while still protecting rights.

**Ariane Burgess:** Do you think that it will improve fairness in enforcement?

**Andrew Thin:** I am not sure that the bill will make enforcement any fairer, but it will streamline it. It will make things fairer in the sense that there will be continued emphasis on the balance between property rights and the public interest. However, that was there before. I am not sure that the bill will change fairness; it is up to the commission to use the existing legislation to deliver the Parliament's intentions as they were in 2010 and before in a fair manner, and I think that

the commission can do so. I do not think that the bill will change that.

**Ariane Burgess:** Thank you.

**The Convener:** On that theme, we have heard concerns about the grazings committees having had to take some rap from crofters that should have sat with the commission itself. They had to report, but they were not allowed to do so anonymously, and it caused quite a high level of stress in townships that are built on people's ability to work together. What you have are committees coming together and effectively reporting—again, I will use the word “clyping”—on someone who is part of what should be a close-knit relationship. Does the bill allow anonymous reporting? How do you deal with that? Do you, as part of your work in looking at whether there has been a breach, have to name someone? Are complainants required to be named? Again, that is a difficult situation. If we are expanding the list of people, will there be some level of ano—anonon—*[Interruption.]* I cannot say the word. Anonon—anononmity—

**Emma Johnston (Clerk):** Animosity?

**The Convener:** Not animosity. Anonymity—that is the word. I am not going to try to say that again.

You know where I am coming from. In the past, there have been concerns that certain individuals have been targeted because of reporting breaches. Will there be that sort of fairness, if the commission is seen, ultimately, to be dealing with complaints instead of concerns about who made the complaint in the first place?

**Andrew Thin:** One of the weaknesses of a system that says, “You can complain, and you can’t,” is that you have to name yourself, otherwise we do not know who you are. It is actually a weakness in the system. As I have said, at the moment, anyone can allege a breach in law—that is just a basic right—but we do not have a statutory duty to investigate unless there is a named person.

There is a very strong argument for moving in the direction of saying that anyone can allege, but they must provide evidence. We will use common sense and discretion to decide which allegations to investigate, and we will investigate where there is strong evidence. The argument that says that you have to investigate if it is Joe Bloggs but you do not have to investigate if it is Bill Smith is illogical. If Bill Smith’s allegation comes with good evidence and Joe Bloggs’s allegation is just an allegation, you will probably want to investigate Bill Smith’s.

**The Convener:** I suppose that I am asking whether complainants need to be named. They could be known to you and they would need to say so. You might have, say, croft number 1 with

Donald MacDonald and croft number 2 with Cameron MacLeod; if there is centuries-old bad blood between them, Donald or Cameron might not wish to be named as a complainant. Is there a method for Donald in croft number 1 to make a complaint without the person about whom the complaint is made knowing who made it?

**Gary Campbell:** That particular matter is for the Parliament to consider. Should it be the Parliament’s will that that is the right thing to do in such a situation, we would be quite content. As Andrew Thin said, it is not for us to decide on the specifics of that. However, if that was the outcome of the bill’s final amendments, it would not make any difference to our work.

**The Convener:** The question is whether you think that naming complainants would be helpful. Some grazings committees have a limited number of members because of the way that the townships are made up, which makes individuals feel less comfortable about making a complaint. At the moment, the members of the grazings committees would be named. In your experience, is there a lower number of complaints because, to use the phrase again, there is no discretionary element?

**Gary Campbell:** I do not think so, because most of those communities are so close knit. Folk will have a fairly good idea about the specifics and who will have made the complaint. However, on the other side of it, I caution against people assuming that somebody has made a complaint, because they might not have. Such assumptions could cause even more disharmony. As you said, centuries-old fights go on, so people generally know who is complaining against them.

**The Convener:** That is helpful.

**Rhoda Grant:** I have a supplementary to that question. Turning the issue slightly on its head, given the age-old arguments, would you find it useful to have a mechanism to deal with vexatious complaints, so that somebody cannot just use the commission to make a report and settle scores?

**Andrew Thin:** No. That is already in legislation. We can deal with that issue with what we have.

**Rhoda Grant:** Okay—that is fine.

My substantive question is about the bill giving the commission more powers to get information from sub-tenants and folk with short leases. Is getting such information an issue at the moment? If so, do the new powers in the bill help to sort that out?

**Gary Campbell:** It is a tidy-up, because it was a part that was missing from the existing legislation. There are quite a number of short-term lets and sub-tenancies, so the powers will be really useful for us, because we have found in our wider work

on residency enforcement that a lot of people who are not resident move to a short-term let or sublet their croft.

They will provide a plan and say, "I'm not resident at the moment, but I'm going to retire in five years' time. In the meantime, I'm going to sublet it to X." It means that the person who holds the sublet and the croft are deemed to be meeting their duties, as long as the person in the sublet is undertaking theirs. However, at the moment, there is no requirement for them to tell us about that.

It is a tidy-up because it enables us to ask for information from people who use a croft. The issue of people using sublets in many ways to alleviate a residency issue is probably a symptom of the situation today as opposed to when the legislation was written. We are already working on policy on that issue. In fact, the "ordinarily resident" issue and all that goes with it will be discussed at our next board meeting, in October.

Alongside that, we are looking at short-term lets and what our policy should be on whether somebody should be able to sublet, because people are currently using the croft as a way to get around residency. It is not a big thing, but the powers will give us that extra bit of information, which aligns very closely with what we are currently doing to, in essence, close the loophole that people use.

**Rhoda Grant:** The bill clarifies that landlords are not obliged to provide fixed equipment. Is that an issue at the moment? How will that clarification be used? Will it help or hinder other activities on the croft and new things that are being introduced, such as environmental uses?

**Andrew Thin:** I do not think that it is an issue at the moment. It will just be stating in law what is already the case.

**Rhoda Grant:** Okay. So, there is not an issue as such. It is just about being clear.

**Gary Campbell:** No. Those provisions are in the tidying-up bracket. It is useful for our internal processes, but the rest of the world will be asking why it is there.

**Rhoda Grant:** That was my thinking.

**The Convener:** Before we move on to the next questions about common grazings, I would like you to set out exactly the issues with sub-tenants and short leases, whether they are formal or informal.

We have heard that a number of crofters sometimes use subletting or informal agreements to help—for example, when there is a crofter in their 70s who is no longer physically able to maintain or cultivate their croft and there is another crofter perhaps 40km away who uses the

croft to graze their cattle or whatever. What are the issues there? A lot of the bill is about clearing things up, and you have suggested that it is a useful tool, but what is it trying to address? What are the issues with sublets and sub-tenants? Is it simply about absent crofters?

**Andrew Thin:** The commission has been relatively relaxed about agreeing sub-tenancies, and it has had the power to do that. What has happened is that, instead of people addressing the fundamental issue, which is that they no longer live on or near the croft, they have applied for a sublet and kept the croft, which is the point that Gary Campbell made.

We need to tidy that up. We have the powers to do that, we can do it now and we are in the process of tightening things up. We should not agree a sublet unless it is a clear reason for it, such as someone going to work offshore for three years and coming back. Subletting because someone cannot figure out what to do or because they are too old to run the croft any longer does not stack up in public policy terms. If someone is too old to run the croft, they are better decrofting their house and letting a young family in.

The bill will tidy that process up, but we already have most of the powers to deal with it.

**The Convener:** We have also heard that, in some instances, crofters have suggested short-term lets until they have made a decision on their future. We had some absent crofters who lived in Inverness and had another job, and it was quite clear that they were never going back to the croft. There was a lack of progress in the commission saying that that was not happening, but it was flexible about reviewing it in 18 months and then in another 18 months and so on. Will that be addressed by the new tougher powers?

**Andrew Thin:** We can address that already and we are addressing it. What has been happening is a result of a combination of things, such as the commission staff trying to be sympathetic and helpful and drift creeping in as a consequence, which is unhelpful.

**Evelyn Tweed (Stirling) (SNP):** The bill will make a number of changes that will affect common grazings, including the automatic transfer of grazings shares with croft purchases and new governance rules for committees. Will you welcome those changes?

**Gary Campbell:** Yes. Anything that helps to improve the running of common grazings will be welcome, including the environmental uses that apply to grazings.

These are probably small steps in what will eventually be a much bigger look at common grazings and their use in the 21st century. If



anything in crofting is as it was in 1886, it is grazings. Those in the room who are crofters, such as Dr Allan—

**Alasdair Allan:** I am not a crofter.

**Gary Campbell:** Sorry—those who are from crofting communities will know that you can give up the will to live at times because of some of the stuff with grazings. The points in the bill on grazings will allow us and grazings shareholders to make the best use of the way that things are currently.

10:30

Along with everyone else, I believe that a wholesale reform of crofting is needed almost 150 years after the Crofters Holdings (Scotland) Act 1886. Seven per cent of Scotland's landmass is in common grazings tenure, so the use of common grazings could be reviewed more widely for the benefit of crofters, landlords, the wider community and Scotland.

On the specifics, I welcome the bill's proposed changes, because they tidy up things that our staff spend a lot of time dealing with in the background.

**Andrew Thin:** I will reinforce that. The proposed changes are helpful, but they are only steps on a journey. As a country, we need to think harder about the issues. A large chunk of land in our country is being used suboptimally and is suboptimally productive, which is not sensible. The common grazings system was designed when people had animals on their croft and they put them out on the hill during the summer. In many ways, the land would be better used for initiatives such as carbon sequestration, peatland restoration, woodland planting and goodness knows what else in the future—there could be wind turbines, for example.

We need to modernise the system so that we are not holding back the productivity of 7 per cent of Scotland's land as we are at the moment. It is a big and serious issue. The proposed changes in the bill are a helpful step and the bill team have done well, but it is only a step.

**Evelyn Tweed:** Do you think that we should be going further?

**Andrew Thin:** Yes, I do, but not in the bill, because we have not got time.

**The Convener:** I inadvertently jumped forward by about six questions, as I got confused with Rhoda Grant. That is my fault—my apologies. We are currently looking at common grazings and we will go back to the Crofting Commission's powers, but we will stick with common grazings for the moment.

I have a follow-up to Evelyn Tweed's question about the transfer of grazings shares. The new legislation stops the inadvertent split or the decoupling of crofting land and shares in common grazings. We have heard that there are some concerns about that, because some people have common grazings shares in order to make up the critical mass for a viable croft. Someone may have 5 or 10 acres of inby land, but, if they are to make the croft work, they need a share of the 5,000 hectares of hill land. If the link is broken, the inby land may not be viable, because there might not be enough land to make the return that is required. Is there an argument that the default should be that the land stays together and that there should not be the option to split the share in common grazings land and the crofting land?

**Andrew Thin:** I am cautious, so let us think through the logic. When crofting was essentially about keeping sheep and cattle, what you have just set out would have made sense: you would have needed a critical mass and the ability to put your animals out on the hill during the summer, and so forth. However, currently, the land in many common grazings is being used suboptimally, because crofts are being used for all sorts of other purposes. The common land has productive uses that may not necessarily be only about grazing; it could be used for the benefit of the country.

It makes sense to prevent the inadvertent splitting of land, but I do not think that it is logical to say that we should not allow shares in common grazings land to be split from crofting land. I can imagine that, in some circumstances, the best way to drive the productive use of common grazings land could be through shareholders being allowed to acquire shares that are disconnected from crofting land. So, I would exercise caution on that.

**Gary Campbell:** I agree with Andrew Thin that inadvertent splitting is the issue. A good default is that the crofting land and shares in common grazings stay together. Common sense would dictate that. However, there are lots of good examples of where people would not make use of the grazings share, especially if they are looking to buy a croft for productive use that does not involve traditional sheep or cattle—they might have a horticultural business. In such an instance, they could say, "Well, I don't want it."

All the processes are there to redistribute the unwanted share among others, but, at the moment, inadvertent splitting is the problem. As I am sure the committee has been told, it creates a croft in its own right, which is called a deemed croft. The knock-on effect is that the deemed croft can actually become a croft that somebody else can use. Then, all of a sudden, there is an additional croft in the township, and maybe another family or other people are there as well.

So, yes, stopping inadvertent splitting would save us an awful lot of bother. How those things sit in the title deeds of owner-occupied crofts also needs to be tidied up—Registers of Scotland is looking at that. However, as long as a mechanism is in place whereby people can say, “I don’t want it, and this is why,” it would be a case of looking at whether the split is reasonable and purposeful.

**The Convener:** Is there an argument for toughening up the scenarios in which those shares can be decoupled from the crofting land? We have heard of people keeping the shares as an investment, because they see future value in them through a wind turbine being built on common grazings, for example. Alasdair Allan will ask about common grazings being used for environmental purposes—for peatland restoration, carbon credits, biodiversity credits and so on.

The whole philosophy behind, and the reason for having, crofting is not so that individuals gain wealth or capital, but the splitting of those shares away from the crofting land is potentially seen as an investment—it is almost land grabbing for a future increase in value. There are rules on shares, and people still have to abide by crofting rules, but do those rules need to be tightened? Do the deemed crofting rules need to be clearer, or will there be lots of court battles and judicial reviews in the future about none of the crofts that are attached to common grazing having the shares and all the shares being held somewhere else?

**Andrew Thin:** The short answer is that we need to be tougher. I do not think that there is a need to tighten the legislation further. What has been proposed is fine. Quite often, it comes back to the commission needing to use existing legislation more firmly and more robustly, and it will.

**The Convener:** How do you deal with lost shares? I imagine that, somewhere along the line, following their decoupling from crofting land, common grazings shares have disappeared, with nobody knowing where those shares sit. Is there a need for the common grazings system to be able to retrieve and redistribute those shares if, for example, the owner cannot be identified or has died intestate?

**Gary Campbell:** From my perspective, yes, please. Inadvertent splitting is the problem. When people deliberately split their shares, they have a plan, although the land banking scenario that you have cited is almost unheard of—its use is minimal. There are two or three places and voices that appear to think it is an issue, but, from my perspective and judging from the statistics that we have, it is not. The real issue is inadvertent splitting. For example, someone might buy a croft with a share that they are not bothered about, because they do not use it, but, when they sell on

the owner-occupied croft, the share remains in their name as a deemed croft.

As Andrew Thin said, until now, we have not used the enforcement powers on those, for all the reasons that I discussed earlier. Then, two generations down the line, nobody knows where that person is—they might have died. In that particular scenario, it would be useful if there was a mechanism that allowed the commission to step in and say what would happen with that share. Obviously, that would be after a due process of trying to identify the person.

**Alasdair Allan:** I do not disagree with anything that you have said about the fact that the landscape has changed and that many people want to use crofts and grazings for different things. However, to push back a little, do you recognise the fear that some potential new entrants might have that they could find it difficult to obtain a croft with the necessary grazings to do what they want to do—to keep animals on the common grazings—if, in some places, the trend of separating grazing shares from crofts was to be completely unchecked?

**Andrew Thin:** I recognise that fear, but we must bear in mind that crofts are already incredibly variable. We have 200-acre crofts and 2-acre crofts—indeed, we probably have 0.2-acre crofts—but very few of them are viable units in an agricultural sense. There are probably more people working viable units in the Western Isles than there are in other parts of the crofting counties. I do not think that what is proposed in the bill, plus what already exists, will create an unreasonable set of circumstances. There will be circumstances in which people acquire a croft that does not have a grazings share but they want a grazings share. In that case, they can try to buy a grazings share, too—that is another possibility. I do not see that as a big issue.

**Alasdair Allan:** The issue has been raised with the committee on trips. I am not trying to pretend that it is apocalyptic, but questions have been raised with us about who might acquire shares in common land and why.

I will move on to the other scenario that you mentioned about the future. The bill gives crofters and grazings committees new opportunities to use common grazings for environmental purposes. At present, are common grazings committees resourced, equipped and able to hold money to the extent that might be needed to do all those things? Does the bill assist with any of that?

**Gary Campbell:** That will not be any different from what they do at the moment. The bill will put into legislation other things that those committees can do without getting the landlord’s consent. That is the same as the situation that I described earlier

about the environmental use of a croft—it will be in legislation that people can do that, so they will not have to worry about getting permission from the landlord.

A grazings committee already has all the necessary powers to do anything on its grazings in relation to the rights that the crofters have, and the bill will introduce another right for the committee to manage. The committees are already doing things. Good examples of that are sheep stock clubs and other things to do with wider use and cultivation, whether people are doing something in common, taking in money, redistributing dividends, managing the fences and suchlike. If a grazings committee is minded to use that provision, it will have all the powers that it needs.

**Alasdair Allan:** But those moneys would have to be held by the sheep stock club and not by the grazings committee.

**Gary Campbell:** Yes—sorry. That would be held separately. However, grazings committees already manage the grazings, and that involves financial matters and the distribution of money.

**The Convener:** Ariane Burgess is next.

**Ariane Burgess:** I am sorry, convener, but I do not have a question at this time.

**The Convener:** Okay. I will go to Rhoda Grant.

**Rhoda Grant:** I would like clarification on deemed crofts, where the grazings share has become decoupled. Who decides what area of ground that becomes? If someone has a share in common grazings, they can use the whole of the common grazings. However, if that becomes a deemed croft, I assume that there has to be an area of ground that becomes the croft part. I see that Gary Campbell is shaking his head, which means that I am about to become even more confused.

**Gary Campbell:** No, there is not. However, as I commented earlier about creating a new croft, someone can apportion their share and it becomes a defined area. If they want to, they can go down that route. At the moment, that is a deemed croft under the crofting legislation, but it is not a croft in the sense that it has a fence around it. If anyone wants to look at how Registers of Scotland deals with registering such a deemed croft, they will see that it puts a random red circle somewhere in the common grazing area, just so that it is on a register. That is why it would probably be quite good for inadvertent splitting to be dealt with.

10:45

**The Convener:** We will now jump back to discussing the Crofting Commission's powers, which is where we should have been.

**Emma Roddick (Highlands and Islands) (SNP):** I would like to go back to our discussion about enforcement. We have heard evidence that there is more focus on residency than on what is happening on crofts. What are your thoughts on the current duties? Are they where they need to be? I have had representations from people on Eigg, who say that the 32km residency limit includes part of the mainland—whether that points to residency might be in question.

**Andrew Thin:** All legislation has to draw lines, and the existing crofting legislation does, too. If we enforce that limit, it works, by and large. It is not perfect. There will be anomalies—you have just pointed to one—but the way to solve that anomaly would be to shorten the distance, which would create problems of its own. People who live and work in Stornoway might work a croft down the road, for example. The existing legislation and the powers that go with it are fine. We just need to use them.

**Emma Roddick:** Let me turn to powers. Stakeholders have raised concerns that restricting ownership of owner-occupied crofts to individuals could block community-led or partnership models. What is the commission's view on such a change?

**Gary Campbell:** We have already recognised that issue, and we are speaking to the bill team about a potential amendment at stage 2 to address concerns. That was raised quite a number of times in the responses to the public consultation. I and the commission would be quite content with a system whereby, as was described in responses by a number of people, if a community housing trust, charity or some other non-natural person inherited a croft, they would have a period of time to do something with it in the spirit of crofting legislation. We are already aware of that from speaking to people, and I am quite happy for it to be addressed.

**Emma Roddick:** Are you confident that, in that kind of set-up, you would be able to enforce, where necessary, if there were complaints about how a community-led partnership was operating?

**Gary Campbell:** Yes, because, if the legislation is drafted in an effective manner, it will give us the powers, after a set period of time, to re-let that croft or do something else with it—especially if it is an owner-occupied croft. It would have to be written into legislation, but I know that the bill team is looking at that at the moment.

**Rhoda Grant:** There are new safeguards in the bill, such as the 10-year restriction on assignment

if the commission lets a croft, as well as the powers to address boundary inaccuracies. How significant are the issues that those measures in the bill are trying to address? Are they causing huge problems? Will the new powers be workable in practice?

**Gary Campbell:** I will take the 10-year restriction on assignation first. It is incredibly rare, but it has happened, that the commission has done the whole piece: where somebody has taken a croft but then terminated the tenancy and the landlord has not done anything about it, the commission has let that tenancy out to somebody else. There is no charge for that. However, within a year or two, the landlord puts the croft on the market and makes a considerable amount of money from it. The new power is to address that situation. It is very rare, but, as you can imagine, it causes upset among stakeholders and the rest of the community, who see it as unfair. I welcome that change 100 per cent, for that particular situation.

Boundaries are a whole different matter. In my day-to-day existence, boundaries, maps and plans that are not accurate—I see some people smiling—are the bane of my life. Any and all powers that we can have to change boundaries, if it is practical to do so, would be most welcome.

I can think of two or three examples this year alone. I spoke to Dr Allan about boundary issues in general. If we had the power to speak to Registers of Scotland and provide a map so that it could move a boundary 10 feet back, following a mistake by someone, so that a croft did not include a non-croft garden, for example, that would save days and weeks of Government resources on trying to sort out such issues. Ultimately, if we cannot go down other avenues, such decisions are for the Scottish Land Court at the moment. Anything within reason and within our powers as a regulator that would allow us to make such changes would be hugely welcome.

**Rhoda Grant:** Regarding the restriction on assignation for 10 years, what would happen if someone's circumstances changed? Would ownership of the croft revert to the commission to re-let, or could they look at an assignation? How would that work? I am thinking of illness and lots of other circumstances.

**Gary Campbell:** A caveat could probably be inserted to say that the restriction applies unless the commission considers there to be specific circumstances, and an equitable arrangement could then be made. However, the aim of the provision is to stop speculation.

**Rhoda Grant:** What about the case of somebody who wanted to assign their croft to a family member because of their ill health, so huge

amounts of money would not be changing hands and people would not be speculating? Would the 10-year burden then fall on the person to whom the croft was assigned?

**Gary Campbell:** They would go into the arrangement knowing that.

**Rhoda Grant:** Thank you.

**The Convener:** The bill mostly tidies up previous legislation, but it introduces a streamlined process for family assignations, which recognises owner-occupier crofts but removes the no-purpose route for decrofting. We understand that that will improve efficiency and ensure fairness, but how can we be sure that there will be proper scrutiny and safeguards to protect against the misuse of the no-purpose route?

**Andrew Thin:** I will address the point about assignation, and Gary Campbell can address the point about the no-purpose route.

There is quite a strong argument for saying that people should be free to assign to whomever they want, because the issue is not who the person is but whether they will be a suitable tenant by working the croft, living there and so on. That is a duties and enforcement issue. There is quite a strong argument for streamlining the process and for people to be able to assign to whomever they like, as long as the landlord does not object, with the commission focusing on duties and enforcement.

That option was discussed. The bill team thought very hard about it, and it then decided on the position that we are in. I am very happy with what is being proposed, because we need to focus on what matters, which is whether the person lives on the croft and is using it properly. Before someone gets a croft, you can ask them whether they will live there and use it, and they can say, "Yes, here are all our plans," but you cannot prove that. It is much better to focus on whether there is real evidence that they are actually doing that, rather than relying on a theoretical argument about whether they will do it.

**The Convener:** What are the thoughts behind no-purpose decrofting?

**Gary Campbell:** My understanding is that it is simply a tidying-up approach to ensure that decrofting is done for the purposes that it is meant to be done. That is the best way to describe it.

**The Convener:** Are you happy that no further safeguards need to be put in place?

**Gary Campbell:** Yes, we are quite happy.

**The Convener:** Thank you. We will move on to a question from Emma Roddick.

**Emma Roddick:** This issue was touched on a little bit earlier. At present, crofting has two registers—the register of crofts and the crofting register. Will maintaining both be necessary, or should the longer-term aim be to move to a single, unified system?

**Gary Campbell:** That is the aim. We had a very productive meeting with Registers of Scotland earlier this year. I am fully aware that, to the outside world, having a crofting register and a register of crofts might not seem like the best use of public resources. However, as the crofting register is populated by crofts and gets to 90 per cent of crofts, there will be a discussion with Registers of Scotland. It has informed us that that is the normal tipping point to force the last 10 per cent on to the register. The plan would be that, as at the moment, the crofting register would be the definitive register, and the register of crofts, as it stands, would become a historical archive for information only and would no longer be updated from that point.

That is probably quite a while away, because, at the moment, we have just over 50 per cent of crofts on the crofting register. However, there is a plan in place. It has probably not been particularly well explained in the past, but we are doing a complete rejig of our website at the moment, and that information will be put on there to explain to people why there are two registers and what the overall plan is.

**Emma Roddick:** Great. Will that consolidation make it easier for you to spot patterns and consider where future work might be needed?

**Gary Campbell:** Yes. The whole point of the crofting register was to add the map to the croft, because the register of crofts does not have any maps. It has some apportionments and decroftings and such like on it, but there is no map of where the croft boundaries are. That is in the gift and ownership of Registers of Scotland—the maps of Scotland are held by it—so the crofting register tidies that up.

Over time, and at some point in the future yet again, I would hope that the crofting register would then be matched to the land register. The overall aim is to move to a position where someone will be able to look at the crofting register and see all the information on it that the register of crofts has plus a map to show the croft. At some point in the future, that could be matched up with the land register.

**Emma Roddick:** Presumably, that will be helpful in dealing with disputes and making sure that boundaries are where everybody thinks they are.

**Gary Campbell:** That is correct. To go back to Rhoda Grant's point, being able to adjust

boundaries is where the register comes into play. As time goes on, we will be able to adjust the boundaries to make sure that they all match up, without having to go through a long and laborious process. That will be hugely useful. If the boundary needs to be moved and everybody agrees that it needs to be moved, it will just get moved. There is no opposition to that approach at all, by the way. It would make everybody's life more straightforward.

**Emma Harper:** I have a wee supplementary. You said that that is a while away. What does that mean? Is it months or years into the future?

**Gary Campbell:** It is years. The crofting register has been in full flow for about 12 years, and we are at 50 per cent. I do not want to pin it down, but it is at least 10 years away. The ones that have gone on to the crofting register are the ones where people are actively doing stuff with crofts, but there will come a point when it will be up to Registers of Scotland to decide when it wants to force the final registrations, because the crofting register is owned by Registers of Scotland.

A good example is when the Crofters Commission was reinstated under the Crofters (Scotland) Act 1955. At that point, if people thought that they had a croft, they had X number of months to tell the Crofters Commission; if they did not do that, they were no longer a croft. That will come at some point in the future.

**Emma Harper:** Okay.

**The Convener:** It is quite obvious that not double reporting transfers and the keeper being ultimately responsible for the registrations is a good way forward. I imagine that, in the future, there will be an opportunity for Registers of Scotland to overlay different maps, whether that is via RPID or future carbon credits or whatever—one place for that sort of operation would certainly be Registers of Scotland. It appears to be the commonsense way forward, along with using strengthened powers to rectify errors, as you have touched on. You are talking about it being a while away, but what other challenges might there be in that transition? What challenges might the separation bring for the commission?

11:00

**Gary Campbell:** One challenge that we are already seeing is incorrectly registered crofts and grazings. It is important to add grazings, because a pile of work was done about 10 years ago to register a lot of grazings and, at the moment, people are questioning some of the boundaries. For everything that we regulate, that would be useful for us in marking the boundaries, because that is already a challenge. One issue is that, in order to maintain a common denominator with

world mapping, a specific level of mapping is used across the world for statutory maps that does not involve GPS co-ordinates—it is a lot less accurate than that. Sometimes, the margin for error in a map can be up to 15m in really remote parts of the country, which is quite a big chunk of land—it could include someone's access road and half their garden as well.

Another issue is that, when people have registered on the crofting register, they have used an old set of title deeds that was made with an Ordnance Survey map 40 years ago and someone has put a crayon around the map area. That crayon mark can translate to 20 or 30 feet on the ground, which means that it could cover someone's road or someone's access, for example.

As we go forward, there will be a process of getting it right. As more crofts come on, especially crofts that bound each other, the accuracy will increase. If we have the powers, as you have said, convener, it is a commonsense approach to match it up and sort it out. Everybody is pretty much in agreement on that.

**Ariane Burgess:** I have a brief supplementary about mapping. This may not be possible with common grazings, crofting titles and things like that, but something that I have been interested in is the whole idea of Scotland adopting a cadastral system of land mapping. I got a smile from Gary Campbell with that comment.

Andrew Thin talked about how quite a high amount of our land is not used as it could be used. If we had a cadastral system—which is something that I have been talking about in the Local Government, Housing and Planning Committee—and we started to track our land, who is on it, what it is being used for and all the grants that get applied to it, could it be useful? Is that something that we could be looking towards—it may not be for this bill, but could it be useful for crofting and all the issues that we are seeing here?

**Gary Campbell:** Yes, and that is the direction of travel. It goes back to what the convener said about the overlaying of maps. The mapping in Scotland is with Registers of Scotland, which has been hugely supportive in relation to this process, because it sees the benefits not just for crofters and the Crofting Commission, which could regulate off the back of it, but for landowners and the mapping of Scotland in the future.

I think that everyone is moving in the same direction and everyone is on board, but yes, it would absolutely be useful for the future regulation of crofting. You would have the opportunity, as you sort out the boundaries and everybody knows what is there, to then look at what the land use is. If there are overlaid maps and somebody is

actively claiming grants from RPID, that would be a relatively straightforward way for us to see whether a croft is being used.

**Andrew Thin:** I would be sorry if we all said, "Oh well, we can't do anything until we have a cadastral system." At the risk of sounding like a stuck record, with the powers that we already have, streamlined by this bill, we can do a lot to drive up the productivity of Scotland's land and we can do a lot to drive up the population of Scotland's rural areas in the crofting counties, so let us get on with it. By all means, let us have those visions, but let us not get too distracted.

**The Convener:** The final few questions will be from Emma Harper.

**Emma Harper:** The bill introduces some simplification and administrative changes, such as a clearer definition of "crofting community", new rules on tenancy classifications and updates to Crofting Commission governance. What is your view on those changes?

**Andrew Thin:** The short answer is that they are all fine and sensible, and we are fine with them.

**Emma Harper:** Sometimes, admin process simplification is a good way to proceed.

**Andrew Thin:** The bill team has worked hard. Its members have had 20 meetings with various stakeholder groups and were all over the crofting counties last summer, consulting people. They have done a really good job. Of course, people will point to things that could be improved, but a lot in the bill will streamline and improve things and make it easier for us to serve the Scottish people cost effectively.

**The Convener:** Gary Campbell mentioned that some provisions in the bill are for tidying up, and some of those do not make sense outside the Crofting Commission. A truer word could never be spoken. I will not put you on the spot just now, but is it possible for you to set out the provisions that your comments related to?

Andrew Thin touched on the fact that there is work in progress. The current legislation allows you to make improvements, and those improvements are under way. We will, no doubt, have an act some time soon that will improve some of the challenges in the current act. Some would say that the bill as it currently is does only half the job—that, potentially, it picks only the low-hanging fruit—and that some of the more contentious and difficult issues that we have to deal with will come in a subsequent bill via a new Government. It would be helpful to the committee if you could set out exactly what work is being done in areas for which current legislation allows improvement—in situations for which, as Gary Campbell stated, the committee might find it

difficult to understand what the provisions are. In addition, to look forward, given that the Government has said that there will almost undoubtedly be further revisions, what might those be, to get the job done?

Again, I will not put you on the spot, but I hope that you get the idea that we would like a timeline of where we are now, where we will be after the bill goes through and, potentially, what other legislation is needed in the near future to get the job done.

**Andrew Thin:** I have made a note of that, so we will respond.

Two things are worth saying. First, I am confident that we can deliver. Fundamentally, the issue is about population retention and land productivity in the crofting counties, which are the only areas that we cover. I am confident that, with the powers that we have and the board that we will soon have, we can deliver most of that through the existing powers, which will be streamlined by the bill.

More fundamental reform is a much bigger question, which brings in land reform. I strongly encourage bringing the Land Commission into that thinking, as it has the brains, the people and the research capacity to do that. There is always a danger of seeing things through too narrow a lens. We will try to respond, but we need to recognise that crofting tenure exists not for its own sake but to deliver. Rural Scotland is now very short of skills and labour, and all sorts of bits of the economy are constrained by that. Crofting tenure is perhaps the only thing in legislation—through the residency duty, for example—that can drive action on some of that.

We are increasingly concerned about land productivity for carbon sequestration, among other things. Crofting tenure gives us all sorts of tools to drive some of that, but we need to think about it in the context of that much bigger picture.

**Rhoda Grant:** A lot of the practical changes in the bill seem like common sense—I am thinking of measures such as moving notices on to digital platforms and the three-year cycle for the census. Are there some risks involved in that? For example, with regard to the census, information might become out of date much more quickly. In addition, when it comes to the use of digital platforms, given that crofters tend to be an ageing community, will they have the same level of access? How will you ensure that people have the information that they need when they need it?

**Andrew Thin:** On the whole, crofters are remarkably digitally connected, as is the agricultural community in general. There are significant issues around the commission's digital

capacity, which we need to modernise, but I will let Gary Campbell deal with that, if that is okay.

**Gary Campbell:** The commission having the power to decide how best to communicate with people is hugely welcome. That is just common sense, and it will allow for flexibility. There is stuff in legislation on how things should be delivered where the method of delivery no longer exists. That could end up being a legal issue at some point in the future.

There is a link with what you are asking us to do. A huge amount of work has gone into the bill, on which there has been a huge amount of consultation. At the same time, as Andrew Thin has said, the commission has been doing a considerable amount of work to use the existing legislation and policy since the additional resource was found two or three years ago. Those two strands of work go together.

As I said earlier, we are moving our website, which has grown organically over a number of years, to a new platform, and we are completely redoing it. As part of that, we are increasing the number of ways in which people can receive notifications. Crofters can sign up so that an email will be pinged to them if an application or a notification comes in from a certain postcode. All our applications are on the website anyway. The minute an application goes up on the website, people will be pinged an email, and they will then be able to go to the website to look at it. That avoids people relying on somebody nailing a piece of paper to a post on a "prominent" part of the croft, which could mean two different posts to two different people. As well as improving things massively, that will result in a huge saving to the public purse.

With crofting census notices, there is the option for the process to be done every three years, although we can do it more often if we need to. There might be a period of time when we do it slightly more often. We want to carry on with the piece of work that we are doing at the moment—I want to get to a point at which we have a return rate of between 95 and 100 per cent. Every year, there is an issue with a small number of crofters. We might continue with an annual census for a while, and, once we feel that the system is working well and—to quote the minister—we have won hearts and minds on the idea that it is unacceptable not to use your croft in accordance with the legislation, we can start to loosen things off. However, that will be a decision for the future.

I am very content with what is in the bill, because it will help us. I go back to the point that the convener made. With some of this, you wonder, "Why are we talking about electronic stuff?" The reason for that is that, internally, that is catastrophic at the moment.

**Ariane Burgess:** It has been good to hear your views on part 1 of the bill. I have a general question on part 2, which is about the Scottish Land Court. Do you have any thoughts about that? I realise that that is not really your space, but it is connected, is it not?

**Andrew Thin:** It is not our space, so I will not comment in detail on part 2. However, to underline the point that you have made, these things are interconnected. There is an interplay between what you put in place in part 1 of the bill, or in previous legislation; the policy plan that we put in place to spell out how that is going to be delivered; and the role of the Land Court in creating case law around some of that. It is an entirely integrated loop, if you like, and it is important that everyone understands that. Conceptually, we need to think the whole thing through in an integrated way.

11:15

**Ariane Burgess:** So, it is important to recognise that the Land Court is part of the system that you are working within.

**Andrew Thin:** It is. Clearly there is, and there must be, a distance between us and the Land Court, but that does not mean to say that we do not talk to the court and all the rest of it, because of course we do. As in any other aspect of public life where there is legislation, it is only when the courts create case law that we start to really know what that legislation means. That is an important part of what we are discussing.

From what I see, there may have been a tendency in previous decades to write crofting legislation in a very prescriptive way, and that has not been helpful. The legislation is inflexible and can be very difficult to operate; our staff, our solicitors and so on find that frustrating. The more flexible we make crofting legislation—indeed, any legislation—the better.

Parliament sets out its intention clearly, but the legislation sits within the wider context, and we need legislation that is flexible enough to stand the test of time. Right now, land use is changing faster than at any time in the past 100 years, so any legislation that we enact now must be flexible enough to cope with that. The interplay between legislation, our policy plan and the case law from the Land Court is a crucially important loop.

**The Convener:** I thank Andrew Thin and Gary Campbell very much for a great session. I must admit that, over the past five days, I have learned so much about crofting, which has, I suppose, highlighted just how little I knew before.

The evidence that we have received in the past five days from grass-roots crofters and from the witnesses today, has been invaluable and will help

us hugely when we consider and scrutinise the rest of the bill. I thank you very much for your evidence.

11:17

*Meeting continued in private until 11:50.*



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The deadline for corrections to this edition is:

**Thursday 23 October 2025**

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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