OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Rural Affairs and Islands Committee

Wednesday 8 October 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 8 October 2025

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RURAL AFFAIRS AND ISLANDS COMMITTEE
28th 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:

Stephen Cranston (Law Society of Scotland)
Brian Inkster (Inksters Solicitors)
Chris Kerr (Registers of Scotland)
Katie MacKay (FMS Law)
Eilidh Ross (Camus Consulting)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 8 October 2025

[The Convener opened the meeting at 09:04]

Crofting and Scottish Land Court Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 28th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I ask everyone to please ensure that their electronic devices are switched to silent.

Our first item on the agenda is consideration of the Crofting and Scottish Land Court Bill at stage 1. This morning, we will take evidence on the legal and procedural aspects of the bill. I welcome to the meeting Stephen Cranston, from the Law Society of Scotland; Brian Inkster, from Inksters Solicitors; Chris Kerr, from Registers of Scotland; Katie MacKay, from FMS Law; and Eilidh Ross, from Camus Consulting. Thank you very much for joining us this morning.

We have around 90 minutes allocated for questions and discussion this morning. We have quite a few questions to get through, so I ask that the questions, as well as the answers, be concise. Do not feel that you need to contribute to every question if you do not have a different opinion or a particular position. Finally, you do not need to operate your microphones, as we have a gentleman here who will do that for you.

I will kick off. I am 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—and, specifically, on the calls for greater clarity around the definition of "environmental use". Who would like to start?

Eilidh Ross (Camus Consulting): Good morning. I do not have a problem with the change that is proposed by the bill, although I do not think that it is necessary. There are, largely speaking, two ways in which you can use your croft. Either you can cultivate it, which essentially means agricultural use, or you can put it to some other "purposeful use". That other purposeful use has a broad definition already in law, which is

"any planned and managed use which does not adversely affect … the croft … or … adjacent land".

For years, I have been saying to clients who have asked me for advice on whether they can use their croft for rewilding or to establish habitat management, for example, that they can as long as they have a plan. You cannot just do nothing with your croft. If it looks to the outsider as if you are doing nothing, you must be able to prove to the Crofting Commission, or to your landlord if it is a tenanted croft, that it is thought through. So, it might look as if it is a field full of rushes, but, in fact, it has been carefully managed in line with a plan that you can produce.

I do not think that the change is necessary, although it will mean that you will not need to seek your landlord's consent to put your croft to an environmental use. At the moment, for agricultural use, you do not require your landlord's consent specifically—although you can still be regulated by your landlord or by the commission if it is deemed that you are not using it—but, conversely, if you are putting your croft to another purposeful use, you are supposed to seek the landlord's consent. If your landlord will not consent, you are permitted to go to the commission. I think that that is the change that the bill seeks to implement. If that aspect is important, the provision is necessary. However, I have no particular issue with it.

The Convener: It sounds as though having the additional purpose of environmental use could make the situation worse. A number of respondents suggested that abandoned crofts could be described as having been rewilded. Could the inclusion of environmental use allow people to use that as an excuse or make it easier for them to not manage their crofts?

Eilidh Ross: Potentially.

The Convener: So, it could make the issue worse. Do the other witnesses have any thoughts on that?

Stephen Cranston (Law Society of Scotland): When we looked at the issue, we noted that the definition of "environmental use" does not say anywhere that the use must benefit the environment. It just says that it must be a

"planned and managed use which does not adversely affect the use of adjacent land".

The bill then gives some examples of activities that would provide environmental benefits, but the term itself, as defined, does not say that. In our written evidence, we have provided a few examples of things that might be on the edge of that. For example, would renewable energy generation be an environmental use?

The Convener: The Law Society of Scotland, in its submission, comments that any subsequent change to the list of uses for crofts should

"not prejudice those who have made long term commitments to particular uses prior to the removal of that purpose".

How will that be an issue in practice?

Stephen Cranston: Our thought on that was that, if there are to be things that a crofter is allowed to do, a lot of environmental projects are fairly long term and we would not want someone to commit to a 40 or 50-year project and then have that use removed from the things that they are allowed to use their croft for. If a crofter has committed to something like that, they should, in effect, be grandfathered into any future change.

The Convener: Emma Harper has a supplementary question on Eilidh Ross's point.

Emma Harper (South Scotland) (SNP): Good morning to youse all. Crofts might be abandoned or just left, and then people might say that that was for rewilding. The whole purpose of crofting is about communities—getting people into rural areas, tackling depopulation and having community benefit. Is consideration for the environment not about supporting communities as well?

Eilidh Ross: My view is that this section of the bill goes to the nub of the bigger problem with crofting legislation, which is that there is no rationale for it. Nobody really knows—since the 1950s, probably—why we have this system. According to the current act, the powers and duties of the Crofting Commission are such that it has to do everything from encouraging the use of croft land for agriculture and other purposeful uses to encouraging population retention. One system cannot possibly do all those things.

This week, I listened back to the evidence that Sir Crispin Agnew gave to the committee in 2016. He made the point, as he did in his article in 2015—it is called "Crofting: A Clean Slate", if anybody is interested—as he has done for years, and as many others have done, that there is no clarity around purpose in the crofting legislation. On top of agriculture, which is the traditional crofting use—generally speaking, unless you are a bit of a nerd, when people say "crofting", they are thinking about that—there are more diversified uses. In my experience, the vast majority of people who are moving into the crofting system at the moment are putting their crofts to diversified uses rather than traditional agricultural crofting, and now this other proposed use is coming in. If, in the future, there were to be another bill—for which there is now widespread appetite in both the crofting community and the associated legal community—I would welcome some properly thought-through policy rationale for the crofting system, which the legislation could then work around.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): To pick up on that point, my impression is that there is widespread welcome for the bill's highlighting of environmental use.

Emma Harper referred to population retention. Some of this comes down to how not just an individual crofter but a community manages or justifies a decision. Hypothetical examples might include every crofter in a village deciding to plant trees, at which point nobody in the village would be actively using their land in the traditional sense and taking part in the common life—common grazings and so on. I am not suggesting that that will be an outcome of the bill, but how do you foresee the definition of environmental use being managed in a way that prevents such scenarios at a community level—at a common grazings level—as well as having individual crofters justify their decisions?

Katie MacKay (FMS Law): I do not have a huge issue with the introduction of environmental aspects. Realistically, it would be unlikely that a township would have absolutely nobody who had livestock—cattle or sheep. Such people exist. However, to echo what your colleague said, crofting is about communities. Some people in the community may have full-time jobs, and it is just not practical for them to have livestock such as cattle.

People can certainly undertake activities for environmental benefit on their croft, whether it be tree planting or producing some form of renewable energy. For example, if they have the benefit of a river or stream running through their croft, they could put in electrical equipment to generate power from it. This aspect of the bill is definitely going to open up possibilities in townships, but it is not going to annihilate a township, because there are people who absolutely love their animals. I find that, in practice, one croft is not enough for those folks with the livestock—they want to take over all the crofts. We really need to be discouraging that and ensuring that crofting is open to all, including new entrants, and not just people who want to take over all the crofts that already exist.

09:15

Alasdair Allan: It was just a provocative question—I am not really holding out that scenario, but it got the conversation going.

A connected question concerns grazing, which you mentioned. There is, in many communities, a crossover between the continuance of a grazed landscape and the continuance of many of the habitats that people are keen to protect. Crofting holds out at least the prospect of low-intensity agriculture that might benefit the environment. My question is about what you foresee the change in definition meaning in the future. Will it promote that relationship and the benefits of low-intensity agriculture?

Brian Inkster (Inksters Solicitors): This may be slightly a side issue, but in my written response to the call for evidence I spoke about the lack of enforcement of these provisions. At present, with misuse, very little enforcement is carried out by the Crofting Commission. We could sit here all day speaking about whether or not we are going to introduce environmental use provisions, but if there is not going to be any enforcement of those conditions, what does it matter? The Crofting Commission currently seems to concentrate on residency as an issue, because dealing with that is an easy task; it can look up a list of addresses and see that someone is not resident, and it can send them letters. The whole question of misuse has never, in my memory, really been tackled.

Tackling misuse would require inspection of crofts and so on; it may be harder to tackle. Nevertheless, the committee needs to think about that, because if we have provisions that say what people can or cannot do in a croft but no one is policing that in any shape, form or fashion, does it really matter?

The Convener: I think that this is an appropriate point at which to jump to questions from the next member. Evelyn Tweed has some questions specifically about the topic that you just raised. I will come back to Ariane Burgess.

Evelyn Tweed (Stirling) (SNP): I will follow on from what Brian Inkster was saying. Brian, do you feel that sections 3 to 7 of the bill give the Crofting Commission enough powers to enforce duties while protecting the rights of crofters and landlords?

Brian Inkster: Sorry—section 37?

Evelyn Tweed: Sections 3 to 7.

Brian Inkster: Oh—sections 3 to 7. Sorry.

The Convener: We are, in effect, looking at the enforcement of crofting duties. The question follows on from your comment that it is all very well to have provisions for different uses, including environmental use, but there is little point in having them if they are not enforced. It is about the section that looks at that.

Brian Inkster: I am struggling to find the section. Is it section 3(2)?

Evelyn Tweed: It is sections 3 to 7.

Katie MacKay: I have a point to make on section 3, if you do not mind. The Crofting Reform (Scotland) Act 2010 brought in the reporting duty for common grazings—in fact, it was there previously, but it was not written in legislation—and it is now proposed that that be repealed in the bill. Instead of having the grazing committees report to the Crofting Commission, the bill now seeks to ensure that other people in the township—anyone, in effect—can report crofts that are not being used.

I do not think that that is conducive to building communities or good relationships in a tiny, or small, crofting township. Reporting by the grazings committees has fractured many townships already, so I completely object to the fact that the bill would encourage people living in a tiny village to report an empty croft or a croft that is not being used. To be quite honest, that is just going to lead to problems—it should not be encouraged in any way, shape or form.

The Convener: I am sure that I am going to pre-empt what Alasdair Allan is about to say, but I note that the need to record who the person complaining was, at a grazing committee or whatever, previously caused issues. The bill will allow anyone to raise concerns.

Katie MacKay: It will, but you have to ask why people raise such concerns. Generally, they do so because they want the croft for themselves. It is nothing but a land grab by the back door. They are effectively grassing somebody up so that they can get in there themselves.

The Convener: You could say that, but, if someone is not abiding by crofter duties, whether they are getting grassed up or not—

Katie MacKay: Sorry, but you are getting into a much deeper level there. Ultimately, you have to consider the financial viability of operating a croft with livestock or cattle. It needs to be a full-time occupation, and you need economies of scale. You really need multiple crofts to be able to do that.

Such factors are at play in the background, and the people who are operating a lot of townships have taken control of several crofts and have cattle there. They are committing to that full-time occupation whereas, for someone who has a part-time job or a full-time job doing something else, who lives in the Highlands and only gets good weather for four months of the year, it is virtually impossible to make any kind of living from it, and crofting ultimately becomes a very expensive hobby.

There is a bigger issue at play than reporting your neighbour because they are not using their croft. People are doing their best.

Alasdair Allan: Most people are doing their best. The problems that you describe are very real. However, on our visit and in other contexts, the committee has been asked the question that Brian Inkster was alluding to: what can be done to ensure that a village does not end up with multiple abandoned crofts owned by people who may not even live in the country? For understandable reasons—I completely appreciate them, as I live in

a community like that myself—you do not want people to be put in a difficult, poisonous situation.

Katie MacKay: That is fine—and it goes back to a point that Brian Inkster made. A commissioner may deal with the odd absentee, but the commission is the regulatory body, which was put in statute in 2010, and it is up to the commissioners to deal with such situations. You can write all the legislation you like about new rules and what the commission will do next, but, frankly, it is not doing anything other than process applications very slowly.

Brian Inkster: I was a little bit confused earlier about the numbering of sections in the bill, but Stephen Cranston assisted me with that. I now know that I was looking at a range of sections on enforcement; I had thought that it was just one section.

Those sections are about someone informing the commission and the commission then taking some sort of action. The bill says:

> "The Commission must, unless they consider that there is a good reason not to, give the relevant person a notice".

How will that work in practice? If the commission gets a letter of complaint from somebody—perhaps because they do not like their neighbour, not because their neighbour is not properly cultivating or using the croft—what process does the commission then go through?

As I said earlier, unless commissioners are actually going out and inspecting crofts, how will they know whether something is happening or not? On receiving a letter, how is the commission able to take what is said in that letter for granted and as being true? There would need to be some process whereby the commission determined that. The only process that I can envisage is an actual inspection, but does the commission have the resources to send somebody out to carry out an inspection every time it gets a complaint about somebody not cultivating their croft? Probably not. That is a whole other, bigger question, and perhaps it cannot easily be tackled in the bill, as it is more a matter of resources for the commission. That is my view.

09:30

Eilidh Ross: There is unquestionably an appetite for increased regulation. There is an acceptance, these days, that it is becoming socially unacceptable among crofting communities if people do not use their crofts or if absentees do not grasp the nettle and pass on their croft as they perhaps should. I personally believe that to be a good thing—and that view is now widespread. There is a desire for greater regulation.

However, in my opinion and experience, the answer to that is not to encourage members of a community to clype on one another—that comes with serious long-term consequences. I heard Gary Campbell talk in a previous evidence session about "a generational dispute"—that was the term that he used—and we are all aware of many generational disputes. I am sure that you are as well. This is how such things start: somebody will make a complaint about somebody else and, in 60 years' time, their grandchildren will still be talking about the fact that that happened. That is incredibly harmful to what are, in some cases, already quite fragile communities. The answer is not to involve communities and crofters in that process. If there is to be greater regulation, it must be better thought through.

I would not necessarily go as far as to call for that provision to be removed from the legislation, but I am already thinking about the next bill, which is the one that most of us are focused on, to be quite honest. The biggest thing about this bill is what it does not do. It does not address any of the problems that currently exist in the crofting system. Most of us are now thinking about what the next bill—the more interesting bill—will look like. However, we cannot forget that this bill is a job of work. The bill team has worked long and hard on it, and most of it is fine, but the concept of neighbours clyping on one another is problematic.

Evelyn Tweed: You are saying that there is an appetite for change and that more regulation is needed but that the way in which the bill has been framed is possibly not helpful. What might more regulation look like?

Eilidh Ross: The other issue with regulation as it currently stands is that the Crofting Commission is based in Inverness. Some of its officials are now based remotely, but it is still an Inverness-based organisation. It does not have area offices like, for example, the rural payments and services division does.

The commission has a service-level agreement with RPID—I keep calling it the Department of Agriculture, despite the fact that it has never been called that in my entire life; I think that that is because of all the crofters who still call it that. When the commission requires evidence in a certain case, it will ask RPID. If that is a contentious or complex case, RPID will ask the reporting officers to have a look and see for themselves, so that they can be the commission's eyes and ears on the ground. However, RPID is not appropriately resourced to do that. If we are considering increased regulation, RPID will collapse under the weight of all the reports that the commission will make to it.

There is also the problem of timescale. As soon as you request a report from RPID, any application

is kicked into the long grass for upwards of two to three months and possibly up to six, eight or nine months—it depends on how complex the case is and how busy the area office is.

There is also the issue of the reporting officers. They are agricultural officers—that is literally their job; they look at everything through the prism of agriculture. There are a number of agricultural specialists—reporting officers, as they are called—who investigate applications that often have nothing to do with agriculture.

How is an agricultural officer to assess a situation when someone who wants to take on a croft has plans to build a couple of pods, to have a big garden with a polytunnel and maybe some chickens, to have a bit of wetland and to grow some trees? That would be pretty standard these days for someone moving into a croft anywhere across the Highlands and Islands. The chickens would maybe be the only thing that would come under the agricultural remit, but how would the officer assess everything else? That is not fair on the officer, nor it is fair on the people who are being reported on, because the officer does not necessarily have any expertise in what they are doing.

I am sorry—you asked for an answer and I gave you more problems. However, that is a problem, and the actual structure of the system needs to be properly thought through. Again, that comes down to what we are looking for from the system.

Once you put pods on a croft, it will never be used for agriculture again. Once you rewild a croft, it will be very difficult to get it back to being agriculturally productive again, so it is a problem. I suspect that the genie is out of the bottle, unless we are not going to allow diversification in the future. I am not convinced that there is a huge majority either way on that point.

It is a different story if you have a large farm and you diversify part of it for extra income, such as by turning your barn into a wedding venue or something like that, but crofts are so small and marginal that, if you diversify on a couple of acres, you affect the operation of the rest of the croft. Effectively, that means that it will never be used for agriculture again. That might be fine, but that decision needs to be taken at a higher level. At the moment, that process is happening incrementally and, to my knowledge, without any decision having been taken on it.

09:30

Katie MacKay: To follow on from what Eilidh Ross said about the pods, although the crofts might not be used for livestock again, I consider diversification to be essential nowadays for the economic sustainability of a lot of crofters and crofting townships. We have moved away from the livestock days—that is a fact of life.

Evelyn Tweed: I apologise to Brian Inkster for putting him on the spot with an unclear question.

Brian Inkster: The numbering confused me.

The Convener: I have a further question for Brian. You highlighted that the Crofting Commission has historically focused on addressing residency rather than neglect. Do you think that the bill can address that issue? We visited Skye and heard about some crofters who are resident in one croft but live quite some distance from some of the crofts that they manage. How do we address that issue to get the balance right?

Brian Inkster: It is very difficult. It comes back to what I said earlier about the resources that the Crofting Commission has to do that work. As I said, it probably tackles residency first and foremost because that is an easy desk job. However, is it fair that somebody who does not live on the croft but cultivates it is penalised when their neighbour who lives on the croft but neglects it is not? That always seems an unfair balance.

That is probably a question for the Crofting Commission. I know that you have already taken evidence from it, but the committee might want to ask it specifically why it cannot tackle neglect and what it would need to be able to do so. The issue probably does not need to be in legislation, because legislation is there to allow neglect to be tackled; it is probably more of a resourcing issue. It is about ensuring that the commission has the ability to do that work.

The Convener: Rhoda Grant has a supplementary on that point before she asks her main question.

Rhoda Grant (Highlands and Islands) (Lab): Following on from what Brian Inkster said, I think that the commission is clear that it needs people to tell it about neglect in order for it to be able to investigate that. Asking the grazing committee to report on what is going on has not worked—it was clear that it would never work when that was legislated for. I am speaking not for the commission but from my understanding of what it was saying, which is that changing the process in order to allow others to report would take that reporting duty away from the grazing committee and would allow other people who saw neglect to report it.

It seems to me that neglect is one of the biggest issues that we hear about, and we hear about it all the time. Speak to anyone and they would say that. The cross-party group on crofting is always talking about neglect and about the fact that people are waiting to get crofts while others are

holding crofts that they are doing nothing with. Therefore, I can understand why the commission has said, “Someone needs to tell us what’s going on. We can’t know everything unless we have people in every community telling us that.” However, that would be nigh on impossible. Might folk have a better idea about how such issues could be identified?

Katie MacKay: Could you not send out a reporting officer to do periodic inspections?

Rhoda Grant: It would take one person a long time to get round every croft—I do not think that they would manage to do so in their lifetime. Should there be a reporting duty as part of the census? Should people say what they are doing with their croft?

Eilidh Ross: At the moment, they are asked whether they are utilising their croft and whether they are resident. I believe that it is actually an offence to give incorrect information on the census, but I have absolutely no doubt that many people do so, safe in the knowledge that they will never be caught. I do not know how we square that and come to an answer on it. The Crofting Commission, as the regulator, is based in Inverness and has responsibility for 12,000 crofts. If we take grazings shares into account, it is more like 20,000 crofts, because for many crofts it almost doubles up. However, if we look only at inby crofts, the figure would be about 12,000. How is that one regulator, given the staffing that the Crofting Commission has and all the responsibilities that it has to undertake, going to deal with those 12,000 crofts?

You would have to come up with a way that did not involve a member of Crofting Commission staff driving from Inverness to Drumbeg or wherever it might be. They might drive past the croft and see that it is well tended and there is a good-looking flock of sheep there and think, “Oh brilliant—that’s great,” but that does not tell the whole story. Those sheep might have nothing to do with the crofter. Maybe the crofter lives there; maybe he does not. The informal use of crofts is widespread, so simply driving past somebody’s croft and looking at it from the roadside is not going to work.

I do not know the answer. I wonder whether the commission’s network of area assessors might have a role to play in that regard. That position is currently unpaid—it is voluntary. I have to confess that I do not know—we do not hear much about area assessors now—but I believe that that network still exists. Perhaps the assessor could become a trusted person in the community, but it might then end up being a very unpopular role. It could go either way. That is the thorny problem at the heart of the crofting system, unfortunately. It is a regulated system, so how is the commission to come up with the evidence that it needs to make proper decisions?

The Convener: I ask Rhoda Grant to move on to the next question.

Rhoda Grant: We touched earlier on the length of time that it takes for the commission to respond. The bill takes away the time limit of 28 days for the commission to respond to an application for another purpose or use, but the 28-day limit for the crofter to respond to the commission is staying. Is that fair and reasonable? My understanding is that, in practice, nobody gets an answer in 28 days anyway, so are we simply putting into legislation what happens in practice?

Brian Inkster: In my written response, I said:

> “Why no timescales for the Commission but timescales for the crofter?”

It does not seem very fair for crofters to be asked to do things within a set period of time if they then might face having to wait for many months, in some cases, for the commission to take the next step. I do not see why the commission should have absolutely no timescale at all. If you are going to impose timescales on the crofters, you should impose them on the commission, so that the crofters know that the commission is under some obligation. It may be that timescales need to be extended—if so, that is fair enough—but it is inherently unfair to have one rule for the crofter and another for the regulator.

Rhoda Grant: What would you suggest as an alternative? Given that, at the moment, the commission does not respond within 28 days and people do not—or very seldom—get a decision in that time, how can we make the legislation work in a way that puts a bit of onus on the commission but is realistic?

Brian Inkster: It probably comes down to what I said earlier about resources. If the commission does not have the resources to actually deal with things within a set timescale, how can it be expected to do so? However, if the timescale is completely open ended, there will be no one sitting in the commission thinking, “We need to do this by a certain date,” which means that there is no process.

It is difficult for me to see what the timescale should be, because it comes down to what the commission can manage and what is seen to be reasonable. If 28 days is not seen to be reasonable, maybe it could be doubled, but going beyond that is probably taking it too far.

The Convener: The commission’s reasoning behind its support of that was that some cases are more complex and would take more than 28 days, but I take your point that it cannot be a never-ending process.

Eilidh Ross, do you wish to come in?

Eilidh Ross: At the moment, the commission is probably processing applications faster than it has done at any time that I can recall, and we should all welcome that. There is, however, a problem with the consistency of decision making. I talk to Gary Campbell and Andrew Thin regularly, and it is something that they are aware of and are working on, but it is an issue at the moment.

Speed is therefore not a concern at the moment. However, I can remember a time when speed was a significant concern and applications regularly took years, not months—it was absolutely ridiculous. Anything that takes away a time limit for the commission does not get my support, I am afraid.

The Convener: Ariane Burgess wants to ask a supplementary question on environmental use and will then move on to questions on Crofting Commission powers.

Ariane Burgess (Highlands and Islands) (Green): I want to come back to the conversation on environmental use, and a point that popped up in Eilidh Ross and Katie Mackay's responses. Do we need to include the idea of environmental use in the bill in order to link it, in the future, to support payments? Is there something coming down the line in respect of the changes to how we support crofters and farmers that the Government has in mind?

Eilidh Ross: To be clear, I am not intimately familiar with the agricultural support and subsidies side of things, but my understanding is that it is already the case that, in order to get public money for agricultural activities, a lot of the time, environmental objectives have to be involved, and there are already a lot of environmental schemes.

Last week, we were talking to a crofter from Lewis on our podcast and she made the point that small-scale agriculture is extremely good for the environment. That is not my area; I am no expert on that, so I do not have much more to say about it. However, she is a crofter and has been for decades, and what she said is something that is widely acknowledged. Environmental care and agriculture do not have to be mutually exclusive.

Ariane Burgess: I absolutely agree with you that they are not mutually exclusive, but sometimes we need a bit of something in legislation to hook funding on to. Maybe that is something that is coming down the line.

Eilidh Ross: Maybe.

Ariane Burgess: We have been having a discussion about moving towards more environmental methods—some of you have used the term "rewilding". We could go down the track of investing quite a lot of money and time in rewilding. Stephen Cranston, you brought up the issue and it sparked something in my mind. We could invest a lot of time and money in rewilding a piece of land, but how can we ensure that it stays in that state if the point of rewilding is to reduce carbon emissions and tackle the nature and climate emergency? Do you see what I am getting at there?

Stephen Cranston: Yes. I am not sure that the Crofting and Scottish Land Court Bill is the way to do that. There needs to be a bigger discussion on how those sorts of schemes work and things like the carbon code, and so on, and crofting will be caught up in that, to a certain extent. I understand that the schemes are fairly long term anyway. I have heard talk about agreements on some of those things lasting for 100 years. That is not a matter for crofting regulation—it is a far bigger question.

09:45

Ariane Burgess: That is very helpful. Thanks.

I will move on to my question on the theme of Crofting Commission powers. I am interested in the whole piece around the bill's aim of ensuring that owner-occupied crofts can be held only by individuals. Some legal and practical problems could arise from that. There are some interesting examples of the Communities Housing Trust trying to create woodland crofts. It is doing something good and needs to hold the crofts as a body, so the legislation might need some exemptions for that.

Eilidh Ross: At the moment, a company can hold title to a croft, and many landlords are limited companies. There is a distinction between the ownership of a croft and owner-occupier status. At the moment, it is possible for a limited company to qualify for owner-occupier status. It is a nightmare to get it, but a limited company can hold that status.

I understand that the proposed change, which I support, is that it will no longer be possible for a limited company to have owner-occupier status, but it will still hold title to land. The organisation involved in the situation that you mentioned would not be affected, because it would effectively act as the landlord of the land. It would not qualify for owner-occupier status, so it could not claim grants in its own name. I think that that addresses your point.

Ariane Burgess: Is what has been highlighted around woodland crofts not really a problem, then?

Eilidh Ross: I am not sure what problem has been identified with woodland crofts.

Ariane Burgess: The woodland crofts team pointed out that it has a project in Glengarry with the Communities Housing Trust. They want to set up a number of new woodland crofts for owner occupation, and a rural housing burden would be attached to the whole crofts. In order to do that, CHT needs to hold the crofts before onward sale can happen, so the team are sitting in the middle of a process, if you see what I mean.

Eilidh Ross: I do not believe that the CHT needs to be the owner-occupier; it needs to own the land, but it does not need to be the owner-occupier.

Ariane Burgess: Okay.

Eilidh Ross: It has always been the case that a tenant crofter must be a single, natural person, not a corporate person or company. At the moment, the provision that allows limited companies to have owner-occupier status is being abused, because the owner-occupier crofter has to comply with the statutory duties, but a company can be based wherever, it can employ somebody locally and it can have one of its directors comply with the duties. At the moment, that is a door to an abuse of the system.

Ariane Burgess: I have another example. If the change comes in, will it apply only in the future? For example, Fair Isle, which is owned by the National Trust for Scotland, has lots of crofts on it. Is that a similar situation? Will the NTS own the land but not be the owner-occupier?

Eilidh Ross: Yes, that is right.

Brian Inkster: I am not entirely sure about the example that you were given, but I think that it is an example in which a trust is the owner-occupier because it owns and occupies the land and wants to carry out some crofting activity—in that case, growing trees.

I assume, from what Eilidh Ross said, that she thinks that if the legislation suddenly did not allow trusts to be owner-occupiers, the two things would be separated if there were to be a transfer. However, if a trust is an owner-occupier at the moment, it would continue to be, because it owns the land.

The provision relates to future transfers of the land. However, it could also affect a body such as a trust that wanted to buy more crofts—neglected crofts or whatever—for a useful purpose. The organisation might be able to buy the land, but it would have to put an individual in the croft, perhaps under a short lease or as a tenant, which might not suit its make-up, how it is funded or whatever else. Therefore, there may be unintended consequences, which should perhaps be considered. For example, consideration should be given to whether there could be some regulatory ability to enable the commission, in certain circumstances, to allow a non-natural person to be an owner-occupier if it could see there was some useful purpose. That could be a way to facilitate that.

I have a separate concern, but it is on the same topic. I did not raise this point in my written evidence to the committee because I had not noticed it at the time, but I have since looked at the bill in a bit more detail. Section 10(2)(2) states:

> "After the relevant date, any transfer of the title to the croft to a person who is not an individual is null and void".

That provision may have unintended consequences, because it reads as though it refers to one individual and not perhaps several individuals.

Since the introduction of the right to buy, it has been very common for a crofter as an individual tenant to purchase the croft in joint names, so that, for example, two spouses own the land. Lots of crofts at the moment are also in multiple, or family, ownership. That also allows greater ability for succession, so that parents can leave a croft to three children, for example.

I do not think that the intention of the legislation is to prevent that. The intention of the legislation is to prevent non-natural persons from owning crofts. However, the way that the section is worded at the moment could be misread or misconstrued. People could say that it means only one individual. Therefore, I think that the wording needs to be changed from "person" to "natural person or persons", so that there is a clear definition of what a natural person is. We should not use the word "individual" in the bill.

Alasdair Allan: On a related point, the Law Society of Scotland has also raised concerns about section 10. Some of the questions have probably been answered, but I wonder whether Chris Kerr from Registers of Scotland could offer any perspective on section 10 and the issues raised by the Law Society.

Chris Kerr (Registers of Scotland): It is possible that there is slight confusion around it. From listening to colleagues on the panel, it sounds to me as though section 10 deals with transfer of the title to the croft rather than with transfer of the underlying ownership, so the position would be that a transfer of the underlying ownership to a non-natural person would remain possible, but the non-natural person's status as owner-occupier crofter would need to change. In some of the submissions, the view was expressed that what was struck at was the transfer of the underlying ownership, meaning that that would be null and void. I think that that is probably not the case, but it would be helpful for that to be clarified.

The Convener: Stephen Cranston, as it was the Law Society's response that expressed concerns, will you set those out? Chris Kerr will have the opportunity to come back in and address them.

Stephen Cranston: I take a different view to the one that has been expressed. I think that the new section 19BB(2) of the 1993 act would make the transfer of the title null and void if it was an owner-occupied croft. We were expecting the bill to provide for the process that Eilidh Ross described—namely, that the title could transfer but not the owner-occupier status. That separation would probably sort out the problem that was being raised about pre-emptions, rural housing burdens and such things.

Our other concern in respect of the provision is about how it would be policed. My understanding is that Registers of Scotland does not normally check deeds. The provision in section 10 is similar to another one about transferring part of an owner-occupied croft. In that situation, the keeper does not check the deeds, which puts a lot of responsibility on solicitors to check them. Section 86 of the Land Registration etc (Scotland) Act 2012 effectively says that, if one of those deeds gets through and a title sheet is issued, a good-faith purchaser can rely on what the land register says. Our question is, if the deeds get through and a title sheet is issued, have we managed to get around the provision because nobody is looking at that?

Chris Kerr: That will turn on what the legislation is attempting to do. If it is attempting to prevent the underlying ownership title being transferred, I fully agree that those issues are engaged. If that is not the case and the legislation is attempting to allow the underlying ownership status to be transferred while requiring a change in the owner-occupier status, I do not think that those issues are engaged. It is fundamental to understand the intention behind the drafting.

If those issues with the title are engaged, in the general circumstance, the keeper will, when processing land registration applications, rely on the certification of the submitting solicitor. The submitting solicitor will, of course, want to ensure that their client is achieving good title. One of the reasons why the keeper will rely on the certification is that, in a typical transaction, the deed and the money will change hands a short time before the application is made to the register. You want to identify problems before the registration stage, because, if there is some fundamental issue with title, it is more difficult to resolve the problem at that stage. The reason why the keeper relies on the certification is that the lawyer, in this scenario and in others, has an interest in ensuring that their client achieves good title.

Section 86, which is in part 9 of the Land Registration etc (Scotland) Act 2012, would, on the face of it, be engaged. If there were to be a situation in which a limited company or some other non-natural person was on the land register as the owner but, according to the underlying property law, they were not the owner, a good-faith purchaser would be protected and would be able to achieve title. The company or the non-natural person could not achieve title, but a good-faith purchaser from them could achieve good title in a further transaction.

Brian Inkster: From what my colleague has said, it may simply be the case that, if the real issue is the owner-occupier status and not wanting incorporated parties to be an owner-occupier crofter, the legislation needs to be changed to state simply that. It need not hit at or void the ownership that goes to a corporate body but say simply that the owner-occupier status would be removed and that, on registering the transfer in the crofting register, the status would be amended to take away the owner-occupier status. That might solve the issue.

Katie MacKay: Correct me if I am wrong, but my understanding is that this change is for the purposes of grant funding. Tenant crofters and owner-occupier crofters have access to agricultural grants, but the landlord—the underlying owner of the croft—does not. By specifically defining that and stating that an owner-occupier has to be an individual person, the door will effectively be closed to companies, trusts or whatever having access to the grant funding that owner-occupiers and tenant crofters enjoy.

Brian Inkster: However, removing their owner-occupier status should resolve that problem, because they would no longer be an owner-occupier and would therefore not—

Katie MacKay: Absolutely, yes. That is how I read it.

The Convener: I look forward to reading the *Official Report* and getting my head around this. It is good to get that on the record, because we were uncertain what the specific issues were from the Law Society's perspective.

10:00

Rhoda Grant: The bill is tidying up an awful lot of the things that were wrong with crofting. Eilidh Ross said that it is a bit boring and that, possibly, everyone is looking forward to a bill that deals with the policy issues, but are there any other tidying-up issues that need to be dealt with?

Brian Inkster: Do you mean extra things that are not in the bill?

Rhoda Grant: Yes.

Eilidh Ross: I would probably need a moment to reflect. Let us remove the right to buy, for example. I am sure that, if you were to go through the bill with a fine-tooth comb, you would come up with other things, but the bill tidies many things up. With the exception of the provision on grazings shares, I am generally supportive of what has been proposed.

The Convener: We might come back to this at the very end, once we have asked some questions and we know that there are points that we have not been able to raise.

Rhoda Grant: I am sorry—I am jumping ahead.

The Convener: Just a little bit.

Rhoda Grant: I am going to get a row.

The Convener: No, not at all.

Rhoda Grant: Under section 11, there is a proposed 10-year restriction to ensure that, if the commission resumes a croft and then assigns it to a tenant, that tenant cannot sell the assignation for 10 years. Does that strike the right balance in stopping the trade in crofts? Does it prevent the commission being accused of giving an asset to someone who will suddenly capitalise on it? We know the value of crofting assignations.

Brian Inkster: In my written response, I expressed concern that there might be situations where that could cause problems. For example, what if there is good reason for requiring the consent to an assignation within 10 years? I gave some examples, such as in the case of death, divorce, ill health or for family reasons that require a geographical move. There are examples of occasions that mean that it would not be sensible for someone to be compelled to remain for a 10-year period. I suggested that there should be a process for allowing exceptions to the rule in reasonable circumstances.

Rhoda Grant: My understanding is that, in such cases, the croft would revert to the commission. Would that deal with the issue of exceptional circumstances?

Brian Inkster: There might be no reason why the current tenant should not be allowed to assign the lease—for example, it could be a family transfer—and the commission should be able to look at that on a case-by-case basis and take an approach that is linked to the circumstances.

Eilidh Ross: I do not disagree with Brian, apart from the last part, about a person who needs to make the break with the croft and move on in a different direction in their life. My opinion is that it would be much simpler just to provide that they would have to renounce the tenancy, so that the croft would become vacant and the whole process would start again. Otherwise, if they chose to assign the tenancy, they could do so in the same way that anybody else could, which is to say that they could charge a consideration for doing that.

I think that it would go down like a lead balloon if the commission was letting tenancies for nothing. When the commission lets tenancies in that way, no money changes hands. The commission is blind to the market in tenancies, which, in my view, is one of the problems that needs to be addressed in future legislation. Commission lets are very rare. I do not have the figures, but I have no doubt that the commission can provide them. This provision alone is fine, but it will not resolve any of the problems with the market in croft tenancies.

Tim Eagle (Highlands and Islands) (Con): Good morning. I have a couple of questions: one on decrofting and another on boundary changes.

I will start with decrofting. My understanding is that the bill does two major things: first, it removes decrofting without a stated purpose; secondly, it limits the right to decroft a house to one per crofter. Do you have any thoughts on that?

Eilidh Ross: Yes. Both provisions are fine. In practice, there is currently no right to decroft for no reasonable purpose. Someone can submit an application, but they will get nowhere with it. It is a matter of tidying that up. Limiting decrofting is fine; it is quite sensible.

Katie MacKay: Restricting decrofting to one decrofting per croft will not be conducive to building communities in the future. Crofting communities do not consist solely of crofts now, because there are multiple people living on crofts in houses that were built on plots that have been decrofted. That needs to continue, particularly if a crofter has a young family who want to stay on an island or in a crofting township. He needs to be able to decroft the site for the kids, to give them any chance of getting on the housing ladder—that is the situation in rural areas nowadays. It is a bit too much to have a blanket policy that there can be only one decrofting per croft.

Tim Eagle: I have perhaps not fully understood that. It is about land for a house as much as about a house that is already on a croft. No?

Could you explain that again? I have misunderstood. If a croft—no. I will stop my question. I think I understand what you are saying. I think I do, anyway. Crofting law is tricky.

I will move on to boundaries being remapped. Brian, you said that those provisions are “a recipe for disaster”. Could you explain that a bit more?

Brian Inkster: I think I had two recipes for disaster. Which section are you referring to?

Tim Eagle: Section 14.

Brian Inkster: Yes—that was the "recipe for disaster". Section 26 was the "can of worms".

I will start with the recipe for disaster. Chris Kerr might also be able to comment on this. My concern is about amendments to the crofting register to reflect what the occupied extent may be. At the moment, the land register shows the title position and the crofting register shows the crofting position, and the two often do not match. We may manage to match the two, with an owner-occupied croft that is clearly defined on the land register and clearly identified on the crofting register.

Alternatively, the crofting register may show the occupied extent, and, if we fiddle around with that and say that we will move the occupied extent and change the boundaries on the crofting register, that is allowed, and the occupied extent changes, whereas the title extent does not change to correspond with that. That will be messy, it will be difficult for everybody to know what is going on, and I think that the two need to be linked in some way. If someone says that they have a different occupied extent, is that reflected in the title boundaries? If someone says that their occupied extent as a crofter is different from their title extent, should they not be sorting out their title extent first, rather than sorting out their occupied extent, which will conflict with the ownership position?

I hope that I have explained that okay—it gets rather complicated. I think that those two things need to be linked and that someone should not be allowed to amend occupied extent in the crofting register if that conflicts with title boundaries and could potentially introduce other landlords—if someone says that they are now part of a neighbouring croft but that is not reflected in the crofting register and another part landlord is brought in. The need, if there is a need, would really also be linked to correcting title boundaries, not just occupied extent. There should be some linkage between the two.

Stephen Cranston: We would agree with a lot of what Brian Inkster has said. I wonder whether that aspect could be dealt with in a similar way to the advance of purchase decrofting direction. A tenant can go to the commission and get a decrofting direction for a site that is pending until he buys that site from his landlord. That sort of thing could work, and it could bring in the linkage that Brian is talking about. Someone would go to the commission and say, "We want to do this," and the commission would say, "That's fine—away and sort out the title, and then this'll become good."

Chris Kerr: I have just a couple of comments. Ideally, you would want the registers to correspond with one another. That is certainly the ideal position. However, I think that you have to acknowledge that getting them exactly in line is a challenge, for some of the reasons that we have mentioned.

The provision in the bill that would introduce new section 39A of the Crofters (Scotland) Act 1993—it is section 14 of the bill—has, as Brian Inkster said, the potential to move the crofting register out of line with the land register. Conversely, however, I think that it also has the opposite potential—in some cases, it probably could serve to bring the crofting register in line with the land register.

From reading the policy memorandum, I think that the assumption is that, where parties use that provision to move crofting boundaries, it would be in their best interests to then carry out conveyancing in order to bring the land register into line. I do not know whether that is a likely assessment of people's actions in those circumstances, but the policy memo seems to rely on the assumption that that will be in people's interests and that they will therefore take the necessary conveyancing steps to bring the land register into line with the change that they have made to the crofting register.

In general, my experience of this sort of thing is that the difficulty tends to be in getting people to agree rather than in the mechanics of conveyancing. The mechanics tend to be fine—they can be expensive and they can take a little bit of time, but they tend to be okay. The challenge is normally in getting parties to agree. New section 39A of the 1993 act that would be inserted by section 14 of the bill is premised on the fact that you have already got the consent of the parties. That deals with some of it, but Brian Inkster is right to say that there is still the potential for parties not to follow through on the land register side and to move the two registers further apart in their reflection of the position.

Eilidh Ross: I do not disagree with anything that has been said there. One problem with the crofting register is that it is a mess. In at least 50 per cent of all cases, where you look carefully at a croft registration and the way that the boundaries of the croft have been registered, you see that they are wrong. The figure probably goes up to 80 or 90 per cent with an owned croft, because that is where the matching—or the mismatching, as the case may be—of the title boundaries and the crofting register will happen.

It goes back to Rhoda Grant's earlier question about whether there is anything that we would like to see that is not currently in the bill. This point might well be one for another day, but there could be something to tighten up the procedures around croft registration, because it can be really tricky to change the boundaries once they have been registered. Again, that requires co-operation and

agreement, which is sometimes lacking. The crofting register is currently a problem.

Tim Eagle: I will go back to my previous point. I am trying to get my head back into gear around the house site issue. I am not an expert in this, but my understanding is that you can build a house on a piece of croft land. There would be nothing in the example that Katie MacKay gave that would prevent another family from building a house without needing to decroft that land.

Katie MacKay: Yes—there would be the funding of it. You cannot raise mortgage finance unless you have—

Tim Eagle: Right. So, you could do that with private funding, but you could not take out a mortgage to do it.

Katie MacKay: The crofter can get a grant of around £37,000 towards building the house, but it needs to be croft land at that point. However, you cannot build a house for £37,000—

Tim Eagle: No. I wish you could.

Katie MacKay: Generally speaking, therefore, if you have a child who wants to build a house on your croft, you have to decroft that house site first. If you are a tenant crofter, you have to get title from the landlord. If you are an owner-occupier crofter, once the land is decrofted, you can transfer title to that plot to your child, who can then raise mortgage finance and build their property.

Tim Eagle: I will turn to Eilidh Ross, if you do not mind. I am not trying to put you in conflict here—you said that you were fine with that. However, if we want thriving rural communities, surely that does not work. That makes sense, does it not? Why would we want that in the bill?

Eilidh Ross: You can put whatever you want in the bill. The point that I was making earlier was that you cannot have everything. You cannot have croft land as housing stock and also have it used as environmental land or agricultural land.

Tim Eagle: Okay—that makes sense.

Eilidh Ross: It is, I suppose, ultimately for the Parliament to decide what the policy priority is and what the point of the crofting system is. A new bill could then, I hope, be introduced that would have that at its centre. The problem at the moment is that there is no clear idea. The commission is, at the same time, having to support local population retention, which I assume means housing—

Katie MacKay: The point that Eilidh Ross is making is, do you want people or animals in rural Scotland?

Tim Eagle: Yes—I get that. I was not clear on that, but I am clearer now as to what you are trying to get at.

The Convener: Before we move on to common grazings, I will suspend the meeting for a comfort break.

10:16

Meeting suspended.

10:25

On resuming—

The Convener: We resume our evidence session on stage 1 of the Crofting and Scottish Land Court Bill with questions on common grazings from Alasdair Allan.

Alasdair Allan: The whole issue of unattached grazing shares—or deemed crofts—is of interest to the committee. It might be helpful if somebody on the panel could take us through the history of how the two came to be divorced from each other, and then we can talk about what happens next.

Katie MacKay: Basically, when crofters were first able to purchase their crofts, there was no legal definition of "owner-occupier", but we all called the person who was then the croft owner the owner-occupier. The share itself remained in tenancy, but it broke off and is classed in legislation as a deemed croft in its own right—that is its technical name.

Over time, the inby croft land—the owner-occupied croft—may have been transferred to a third party and they will have forgotten about the share. In particular, that can happen if there has been a death, if the croft has been transferred and if they have completely forgotten about the share or did not realise there is a share, or if the share was just not included in the inventory for confirmation. The share will remain in the name of somebody who is deceased, somebody who is living abroad or somebody who is an absentee.

There are many unattached shares floating around. Since the Crofting Reform (Scotland) Act 2010, there have been attempts to try not to separate the share from the inby croft land. However, it is about the practicalities of dealing with the transfer of the share—it is expensive and people just do not want to pay for that, so it does not happen.

Eilidh Ross: When a conveyance is granted, there is a tenanted croft—tenanted inby land—with a pertinent of grazing, which is the grazing share. When you purchase your croft land, your tenancy over the area that you take title to—the area that is defined on the plan during the conveyance—is extinguished at the point of registration. You have an owned croft—hopefully an owner-occupied croft, if you are lucky and comply with the

definition—and, at that point, you also have a tenanted grazing share.

For a long time, the Crofting Commission did not reflect that separation in its register of crofts. When most crofters tell the commission, "I have purchased my croft," and the commission asks, "Did you include the grazing share?" the crofters will invariably say yes. In most cases they did not include the grazing share, because it must be listed in the parts and pertinents clause of the conveyance of the deed for it to be included in that conveyance. Mostly, the share is not listed there.

In order to bring some clarity to the situation, the Crofting Commission brought a reference to the Land Court in 2012. There were lots of questions about what happens to the grazing share, whether we should be treating it separately and so on. The Land Court struggled with that, and there were a few days of debate about it. The result of that debate was that the Land Court recognised deemed crofts and said that they are separated at that point.

Thereafter, the commission started changing the register of crofts, which is why the number of crofts has gone up so significantly, from 12,000 to more than 20,000. A lot of the time, the extra number is accounted for by the grazing share being a separate entry in the register of crofts.

Currently, the position is that if the conveyance does not specify either way, the grazing share is separate. If the grazing share is specified in the parts and pertinents clause, it is treated as what the Land Court calls a quasi-servitude. If the share is separate, it is a deemed croft and has its own entry, which we know how to deal with. It is not ideal, but it is established. If the share is included in the conveyance, it is called a quasi-servitude. A servitude is a thing but a quasi-servitude is not, so the Land Court has struggled to define it in legal terms.

10:30

My concern with the current proposal in the bill is that it will, by default, mean that the grazing shares are included rather than excluded. If that happens, we will end up with an awful lot more quasi-servitudes than we currently have. I do not know how Registers of Scotland would deal with all those quasi-servitudes and how they would appear on the register. If I was buying my croft, I would prefer to have a deemed croft.

It is not ideal, because nobody wants the grazing shares to be separated from the crofts, but that is the situation that exists. It is the lesser of two evils to keep the legally understood approach rather than amend it merely in order to say, "We are resolving that problem." It would create another problem, because what exactly is a quasi-servitude? Nobody really understands.

Alasdair Allan: I had hoped that the explanation would simplify matters, but I am not sure that it does.

Brian Inkster: Quasi-servitudes—I prefer to call them pertinents—are, as Beatrice Wishart knows, very common in Shetland. Most croft transfers in Shetland, unlike in the rest of the country, involve the landlord agreeing to grant an explicit reference in the parts and pertinents clause to the grazing share being carried with the title. More often than not, if you deal with a property in Shetland, you find that the grazing share was attached at the point of purchase, has never been separated and forms a part and pertinent of the croft.

It means that, in any future transfer of the croft, the part and pertinent grazing share goes along with it. A separation does not happen, unlike in most crofting counties outwith Shetland. I have no idea why that is the case, but it was probably a conveyancing procedure that was historically adopted by the firm that acted for most of the landlords in Shetland, and it just continued including the grazing share as a part and pertinent.

It does not really cause any problems. It solves the problem of the separated shares, because it means that the share is attached at the point of purchase, it remains with the croft and it is not separated. It avoids the situation of the share being held as a separate leased entity. It resolves issues such as succession or joint ownership. That is because, if a husband and wife buy a croft, the share is included in the title. If they then leave it to their three children, that share is part of the title that the three children have, whereas if it is kept separate as a deemed croft, it can only be held in the tenancy of one person. You then have to decide on a purchase anyway if a deemed croft is involved in order to separate effectively the person who holds it. A husband and wife might have the title to the croft, but you then have to choose whether the husband or wife has the tenancy to the share, so a separation happens naturally—or perhaps unnaturally—anyway.

My view is that the Shetland model works very well and should be looked at and considered as a method of ensuring that the shares are attached.

The difficulty that I have with the way in which the bill has been worded is that, although, as Eilidh Ross says, it reverses the position and says that, unless you expressly exclude the share, it will be included—whereas, in Shetland, it is expressly included on a regular basis and therefore forms a part and pertinent—it does not force the issue, because it is still a question of choice. The landlord can still say that they are expressly

excluding it, and that is exactly what is going to happen, because landlords have been used to excluding it by not having to specifically state that. They are now going to say that it is excluded, and it will just be excluded, so you will still have the same problem carrying on for ever, and there will be no clarity.

The policy decision is that we want to ensure that the share stays with the croft and can possibly be reattached. I will come on to explain how that could happen. If that is the policy decision, there needs to be more of a compulsory element to this, and it needs to be the case that, when somebody purchases their croft, the share will be part of the transfer as happens in Shetland. You will not be able to include it or exclude it—it will just be included—and you will make that a compulsory element of the purchase. Any crofter can purchase their share as a part and pertinent.

The issue of how that might appear on the title is something that I covered in an article some time ago, following discussions with Registers of Scotland and the crofting register. The land register does not show those pertinents, but the crofting register will show that the share is part of an owner-occupied croft. It is important that, although, at the moment, the Shetland title deed might specify that the share is included, once it goes into the land register, the title sheet does not show that, so you always have to look behind the title and look at what the dispositions said when it was granted. A conveyancer can do that, and, as long as they are doing that, they know that it is a part and pertinent, and, if it is shown in the crofting register, that it is covered.

Likewise, if you allowed a system that made it compulsory, you could then include the ability to reattach these floating shares by giving the crofter the ability to purchase, as a pertinent, the share that is floating that used to be part of the croft. In that way, they could bring the two together and, over time—it will take a long time—it would resolve the problem, because all shares would be reattached and all shares would be linked to an owner-occupied croft.

Alasdair Allan: Would it be fair to say that, outside Shetland, many of these situations have happened by accident rather than by design? Is the bill designed to correct situations that have happened by accident rather than by design?

Eilidh Ross: Brian Inkster is absolutely right that grazing shares being included in dispositions is really common in Shetland. I do not deal with registration of title, and I have not done so for a few years now, as a non-practising person, but I work with firms that register title and our experience has not been positive. You have just heard Brian Inkster say that the pertinent—the quasi-servitude—will not be specified on the title sheet. I have concerns about that. Yes, we should all look behind the land register, but that is not easy when you are dealing with conveyancers and you have a land certificate and they are saying, “There’s no grazing share on this, so what do I do?” You then have to give them a mini-lecture to say that it was attached and that they have to take your word for it and so on. I am sure that it works in a lot of cases, but I do not think that it is to be encouraged in the future. What would probably end up happening is litigation to get to the nub of what the right actually is or was.

Katie MacKay: In my experience, it was the crofting landlord who was reluctant to allow the share to be sold with the inby croft land. They did not want ownership of the share to pass; they wanted to retain full control of the hill—although there are one or two conveyances where that is included as a pertinent. That has not happened, however.

We need to be mindful of certain things. Historically, such shares have not had much cash value. Crofters might trade them for £500 each or whatever, if they have a lot of cattle and they want to put them all out on the hill. Given the other changes that are proposed to uses of common grazing, particularly where there is a very well-organised sheep stock club or grazing committee, the shares could become quite valuable in the future, particularly if there is significant woodland development or a wind farm, for instance. It might sound great just to reattach the share, put that in legislation and let it happen, but I agree with Eilidh Ross that there could be significant litigation from people.

The Convener: Crofting law is incredibly complex and there is a lot of history behind it. We have to understand that history to understand why we are at this point. I am a lowlander, and I am new to this, but let us suppose that a township has 50 crofters who all have 15 acres each. To make the croft viable, they have a share in a far larger area—5,000 acres of hill for grazing. The viability of that croft was absolutely linked to the grazing shares. However, that link has now been broken, whether deliberately or not. As Brian Inkster said earlier, is there not an argument that the physical croft should be tied in to those shares in order to continue as a viable unit, avoiding the risk of land banking or right banking where a 5,000-acre hill could potentially have wind turbines, peatland restoration or solar panels? The shares, which used to be worth very little, would then have a bankable value, or they could in the future. As Brian was saying, perhaps having legislation to pull things back together would have been the right approach, historically.

I will bring in Brian Inkster, as I have mentioned his name, and I will then bring in Stephen Cranston.

Brian Inkster: Katie MacKay said that landlords often want to retain the share and create it as a tenancy, because they do not want to give up their common grazing. Indeed, they are not giving up their common grazing. There is a misunderstanding there. The landlords remain owners of the entire common grazing. It is a pertinent, a quasi-servitude or whatever, but that is no different: it is treated in the legislation as just being a share in the grazing—it is a right to use the grazing. The ownership position does not change, and the situation does not really affect the landlord in any way apart from in the fact that, when a croft is sold and the deemed croft is retained, a rent will be ascribed to the grazing share. That rent will be small and the landlord will have to collect a small rent for the grazing share, whereas, if it was included in the value as part and parcel of a purchase, the landlord would get a capital sum reflecting that.

As far as the future goes, for the landlord, there is no effect on any development on the common grazing; the position remains the same. If a wind farm developer comes along, they must do a deal with the landlord, who still owns the common grazing. The pertinent—which is no different from having the tenanted deemed grazing share—still gives the crofter the right to receive half the development value of the land over a period of time.

The actual legal position is not really any different, on a day-to-day basis. The landlord is not giving up an ownership right as such; they are just allowing the grazing share to become a pertinent, which is the ability to use the grazing. It is not a fundamental ownership title right as such.

People need to get that clear in their heads. Once you have that clear, you can see that the Shetland model has actually worked in Shetland for many years without problem. If you have an example that you can use, why not use it? The example works in practice and there is a lot to commend it for. I do not believe that we will end up in lots of litigation over it, because, as far as I am aware, there has been no litigation in Shetland over the status of those shares. Everybody understands and it is clear in law.

Eilidh Ross referenced the Land Court's clarification of a lot of these things in 2012. The law is a lot clearer than it was before that date. As a result, although a few things might still need to be clarified, on the whole, the law is fairly clear and people understand how the process works. As I said earlier, if the policy is to reattach shares, that is a clear way to ensure that it is done.

10:45

Stephen Cranston: We do not have a particular position on which of those options should be chosen. That is a policy question for others. Our main point is the one that Eilidh Ross mentioned a while ago about quasi-servitude. As you said, Eilidh, that is not really a thing.

With a tenancy, we can draw on lots of landlord and tenant law. With this issue, we need to think about the relationship between the owner of the grazing and the crofter who exercises that pertinental right. As we mention in our written evidence, in a case in Shetland that Brian Inkster was involved in, a crofter holding one of those rights took an apportionment, and the Land Court has now said that that apportionment is now rentable again because the crofter has taken the apportionment. Although we do not necessarily have any objection to that being done, we need the background filled in, because we do not have that general law background to fall back on.

The Convener: Do you want to come in, Katie?

Katie MacKay: I was perhaps a bit unclear about the landlord situation. Although no ownership of land passes, no more rent will be collected. That perhaps gives more clarity on the matter.

If you are going to do that exercise of reattaching a share, you will need to specifically state in which scenarios it will take place. If you had vacant shares, it would be quite easy to state in the legislation that they would now reattach to the original crofts to which they pertain or to state that, at point of death, shares would transfer back to the original croft. Although the latter is the scenario where I envisage a beneficiary in the background—someone who thought that they were getting a big cut of wind farm money—raising issues, they would not really have a case if it was in legislation and it happened automatically.

Rhoda Grant: On that point, it is about the shares that are out there now and have been separated. People are possibly not even aware that they have a share.

Katie MacKay: It is very expensive. If there has been a death and the share has been forgotten about, it will cost £2,000 to £2,500 in legal fees just to reattach the share to the croft. Putting that provision in the legislation would simplify things for a lot of people.

Rhoda Grant: How would we do that in legislation, given that, as you said earlier, some people know that they have the share floating around and that something is going on in the common grazing that will bring them an income, whereas—

Katie MacKay: At the moment, on a practical level, the shares are not generally separated. If you buy your inby croft land, you become the tenant of the share and you continue to rent it. It is just that, in certain scenarios, the share is in third-party ownership or completely vacant. The legislation could state that any vacant shares would be reattached specifically to the croft that they originally related to and that, at point of death, any unattached shares that had become separated from the croft would automatically convert back to whoever was in control of that croft.

Obviously, the scenario in Shetland is different. I am talking only about the cases that we generally deal with, where the share has not been purchased as a pertinent to the croft.

Rhoda Grant: If we did that in legislation, would it not have a cost attached?

Katie MacKay: Not that I can—

The Convener: There will always be a cost. [*Laughter.*]

Brian Inkster: On the point about reattaching shares, you have to remember that the share is currently treated as a deemed croft held in tenancy, which might be in the name of one individual, whereas the croft itself is owned and has a title.

There are two separate types of entity, so it is not as easy as saying, "We are going to reattach it." There needs to be a process to turn that tenanted right into a heritable right. It needs to function almost like a right to purchase on the part of the croft's owner, so that, if the deemed croft has been separated from the main croft, the owner has the right to seek to acquire it.

Katie MacKay: If the definition in the legislation is that an owner-occupier can only be one individual, ownership will attach solely to that individual. However, you cannot apply it retrospectively, because a lot of crofts have already been divided out in multiple ways.

The Convener: We will seek further guidance on that before we speak to crofting stakeholders.

Eilidh Ross: The bill started out as a piece of legislation that was focused on amendments and technical corrections. In its journey, several things were thrown into it that were resurrected from a previous time, such as standard securities, joint tenancies and grazings shares. Most of those things, which were added to what was supposed to be a tidying-up bill, have now been dropped, which is correct in my view.

You have all heard how complicated and difficult the issue of grazings shares is, and the danger is that the bill is just more tinkering. That is the problem with crofting legislation—and it has been for decades. The more tinkering you do, the more time you can spend thinking up a fudge about common grazings that people are happy with and can sign up to, but it will ultimately still be a mess. In fact, it will be a mixture of several messes, because it piles one thing on top of the other.

My preference is that the grazings shares provision be taken out of the bill. The common grazings model is outdated and does not work for anybody, so it is ripe for serious reform and for an assessment of what we are doing with the crofting system—of what kind of system we want for our country. The provision in the bill will not help us to get there.

The Convener: Okay. Thank you.

Beatrice Wishart (Shetland Islands) (LD): Good morning, panel. My question is about the governance and use of common grazings and whether the changes will provide sufficient clarity, accountability and legal certainty. Brian Inkster made reference to a "can of worms", and, from what we have heard, I think that we are looking at more than one. If anybody wants to add anything to what has been said, I am happy to hear it.

I want to ask a question about Shetland. A few years back, there was an application to establish a community woodland on common grazings, which involved contact with the Crofting Commission and the Scottish Land Court. I am told that it cost £500 and took eight months to conclude. A constituent involved in the process suggested that decision making on that type of land use change should be devolved to relevant grazings committees. I am interested to hear the panel's views on that suggestion.

The Convener: I am looking at Brian Inkster, given that it was a Shetland example.

Brian Inkster: I have not thought that issue through, so I am a little bit on the spot. There is probably a danger in devolving regulatory powers to grazings committees, if that is what was suggested. We have a regulator—the commission—which should be the body that regulates and listens to what the grazings committees say. We would have to look carefully at any changes, because grazings committees, for one reason or another, do not always agree with what is proposed to be done to grazings in any case. I am not sure how well devolving it could work, but I am afraid that I have not given it much thought.

Katie MacKay: In general, grazings committees are in office only for a three-year period, so they have only a short window of control over what goes on in the common grazings. I would not, therefore, encourage giving them any more powers in that regard.

The Convener: Are there any other comments?

Eilidh Ross: A can of worms comes to mind again.

The Convener: Cooking a can of worms, a recipe for a can of worms, or something like that.

Does Beatrice Wishart have any further questions?

Beatrice Wishart: No, that is fine. Thank you.

The Convener: We will move on to the crofting register, with questions from Emma Harper.

Emma Harper: I have a quick question about grazings committees first. When do grazings committees meet? Are they required to meet every six months or whatever over the three-year period?

Katie MacKay: It depends on the township. The townships are all very different. In some villages, the grazings committees meet once a month and have little sub-committees that deal with certain aspects. In a particularly large township, with 65 crofts or more, the committees are generally much more organised. It varies from township to township. Some of them are very laid back—it just depends.

Emma Harper: Are they different depending on whether they are in Shetland or Orkney, or on one of the other islands?

Katie MacKay: I can really only speak for Skye; I do not know about the others.

Eilidh Ross: There are no legal differences, but cultural differences mean that there will be differences in the frequency of meetings, I would say.

Brian Inkster: You also have to remember that a lot of grazings are not regulated, so there is no committee in place at all. A lot of grazings have no committee to govern what happens on them.

Emma Harper: Thank you. That is helpful.

Crofting law is complex. Section 26 of the bill, on "Rectification of the Crofting Register", would allow the keeper to correct inaccuracies, with notice and consultation. In that regard, how can the keeper and the Crofting Commission ensure that, post registration, things such as changes—rectification is the word that is used—to boundaries do not cause legal uncertainty for new owners, lenders or other interested parties, particularly if previously excluded land is later added to a croft?

The Convener: That is a can of worms. We will go to Chris Kerr first and then come back to Brian Inkster.

Chris Kerr: In general terms, in relation to both the crofting register and the land register, you are always trying to strike a balance with the rules on rectification. You want to allow straightforward, obvious problems to be corrected without putting the parties whose lives are affected by them to too much trouble in the form of expensive, time-consuming court action or whatever else, while also trying to ensure that the system gives a sufficient degree of certainty to people who rely on the registered boundaries. It is also about protecting property rights, so that you do not have an official such as the keeper changing boundaries where there is a live, active dispute, because disputes of that nature are either for the parties themselves or for the courts to resolve.

11:00

The current position in relation to rectification of the crofting register is very tightly drawn indeed. The bill makes some changes to that, particularly around typographical errors, and it gives some new powers to the commission and to the keeper. I think that some of that will turn on how those powers are used in practice. I would expect that, particularly in relation to the powers that are at the keeper's initiative, as it were, they would be used sparingly and only when the position is absolutely clear and not disputed by the parties. As I said, the correct place for such disputes to be resolved is by the parties themselves or by the court.

The bill as it is currently drafted is reasonably wide in how it allows for potential rectification. I would expect that, in consultation with crofters and others, the keeper would issue guidance that would probably seek to narrow that in practice, given the complexities that we know about.

I know that there will be other views among the panel, but, from our point of view, the current law is very tightly drafted. Making some changes to it is probably sensible—Eilidh Ross mentioned the number of crofts with boundary challenges, which will need to be addressed—but when it comes to the question of where the balance is struck in relation to crofting law, there will be people who are better placed than the keeper to take a view on that. Ultimately, we will, of course, implement whatever is in the legislation.

There are sensible changes in the bill, but some things will turn on practice and how the provisions are used, and on where the guidance sits.

Emma Harper: Referring back to what I said about correcting inaccuracies with notice and consultation, and thinking about the register of crofts, the crofting register and the land register, how does it all work together? Do some bits need to be sorted, or do changes need to be proposed, essentially to make the whole registration process

clear and straightforward for everybody, so that we can simplify it a bit?

Chris Kerr: That is a big question—a number of people may wish to come in on it.

One of the challenges concerns the legislative regimes underpinning the crofting register and the land register, which are different for a reason: they deal largely with different interests, although there are occasions when those interests will cut across one another. We have been speaking about grazing shares and quasi-servitudes, which present a significant challenge for the land register. We know how to deal with servitudes but, bluntly, we do not know what quasi-servitudes are, and that presents a difficulty.

There will be work that we can do on guidance, but one of the most fundamental things in relation to the land register is that conveyancing is often required, so the keeper's powers to amend the land register are reasonably limited, mostly to making changes to bring the land register into line with the crofting register. People need to go through conveyancing, they need deeds to change the underlying position, and the keeper gives effect to that. We mentioned some aspects of that earlier.

From where we are, it is difficult to sketch out a regime across both registers that meshes them completely together. As time goes on, there will probably be changes and improvements that we can make to how we interact with crofters and lawyers and to the guidance that we give to plot a way through. Unless you fundamentally change the legislative structure of the two registers, you will always face that challenge.

Emma Harper: By "the two registers" you mean the land register and the crofting register.

Chris Kerr: Yes.

Emma Harper: We now have the "Register of Crofts" in the bill. Can somebody clarify for me—

Chris Kerr: I am not terribly familiar with the register of crofts. Others may be able to speak about that.

Emma Harper: What is it with the register of crofts versus the crofting register? Why do we have them both?

The Convener: Eilidh, do you want to respond first? We can then come back to Brian Inkster to answer the initial question.

Eilidh Ross: The register of crofts was established in 1955—at the same time as the Crofters Commission. The Crofting Commission—as it is now—has a statutory duty to have a publicly available register. Most solicitors think of it as being akin to the old general register of sasines, which is the predecessor to the current land register. The register of crofts is clunky and old fashioned, and it is not map based.

Since the Crofting Reform (Scotland) Act 2010 established the land register maintained by Registers of Scotland, there has been a rolling process of registration every time someone hits a trigger. For example, if someone wants to apply to decroft or assign, or to do anything with their croft that changes ownership, they must register their croft on the crofting register, which is map based. Interestingly, it does not contain some of the information that is held on the old register, so that needs to be considered if we are not to lose that information.

Those two registers exist in addition to the land register. There are title boundaries and croft boundaries. I am concerned about the proposal to increase the ability of the Crofting Commission and the keeper to rectify. These comments are perhaps more directed at the commission, but the bill provides for the commission to take a view on what the croft boundaries should be.

If a commission official is looking at the crofting register and saying, "That doesn't look right," how have they come to that view? At the moment, the position is that the commission will not be drawn on that, and it is quite right to take that approach; it cannot be drawn on that because it is not within its jurisdiction to have a view on croft boundaries. Croft boundaries are for the crofter—and the landlord, if appropriate—to agree, and it is for the commission to do its regulatory business. It is not for the commission to take a view on what the boundaries should or should not be, so I am a bit concerned about that aspect. That is quite a sea change for the commission officials to have to cope with, because their training is that they must not go there and that it is not for them to take a view on croft boundaries. However, this provision sort of does require them to take that view.

Brian Inkster: In my written submission, I said:

> "This potentially opens up a can of worms. One of the benefits of the existing system is an element of certainty, following the 9 month appeal period, of what has been registered. Now this can change. What if, for example, an area of land has been excluded from the croft registration and effectively therefore been 'decrofted'"?

That often happens: the crofter submits their plan and there might be areas of land that they have never considered to be part of the croft, such as land outside a fence—it might be the verge of a road—that, historically, was part of the croft before the fence was put up. In effect, the registration is being done on the basis of the crofter's plan—neighbours have the ability to object at that stage—and you end up with a defined area that has been registered and that the crofter, the landlord and the neighbours, assuming that they have not objected, are happy with. You know what

those boundaries are and, for all time coming, those will be the boundaries.

If there is now the possibility of correcting a material inaccuracy in the register, it might involve saying that part of the land was actually part of the croft and should be included. Therefore, the certainty that you have with the crofting register will never be a certainty if it can be changed. It is possibly going to open up a situation whereby solicitors will be arguing over it in a transaction and will still be saying, "What if the keeper or the commission suddenly decides that something that was originally part of the croft is now part of the croft again?" The example that I gave in my written submission was of something that, due to the registration process, was originally part of the croft but has, in effect, been decrofted—because it has not been included in the map—and is then developed on. Somebody might have spent money developing on that land, but what if somebody then comes along and says, "That's actually part of the croft and we're putting it back into the croft"?

Therefore, with regard to the power for the commission or the keeper to say that something needs to be adjusted, I think that that could happen only if every single person who was potentially affected agreed unanimously.

Ariane Burgess: I will move on to part 2 of the bill and the merger of the Scottish Land Court and the Lands Tribunal for Scotland. I will direct my question to you initially, Stephen Cranston, because of your responses in the call for views. I am interested in your views on part 2 of the bill with regard to the merger.

Stephen Cranston: Our main concern is that this is not seen as a cost-saving measure. Perhaps I can say it in this way: we hope that the merger will be used to do more with the same rather than the same with less. We are aware that there will be cases in which the experience of, for example, a surveyor member of the Lands Tribunal would be useful in a Land Court matter. There are some cases in which the combined jurisdiction would be useful in order not to have to raise two applications, one with each body. That was our main point, but we have also highlighted a few technical points in our written response that I can mention, if that would be useful.

Ariane Burgess: Yes, please.

Stephen Cranston: These points are more to do with the schedule. First, on a small point, at paragraph 25 of the schedule, the heading refers to "certain leases" and the text itself appears to refer to all leases. I do not know what the intention is, but there seems to be a disconnect between the heading and the wording.

The other thing, from an access to justice perspective, is that paragraph 30 deals with what are called stated cases—which are, colloquially, appeals—from the Land Court to the Court of Session. The text there is fairly dense. The Land Court, probably more than any other court in the country, is visited by party litigants. From that, there are two real points. First, the rules appear to say, or, at first blush, could easily be read as saying, that there is no appeal on agricultural holdings cases. The technical reason for its saying that is that agricultural holdings appeals are dealt with by the Agricultural Holdings (Scotland) Act 2003, and those are appeals, not stated cases. I am not sure that a party litigant would get that. I had to read it a number of times to realise that that is what is being said. Secondly, why do we have two different procedural methods? Why do we appeal a crofting case to the inner house of the Court of Session differently to how we appeal an agricultural tenancy case? We are not aware of any reason why those procedures are different.

Ariane Burgess: Thank you for that detail. I would also like to come back to your big concern about the reason for the merger being an underlying cost-saving measure. What would be lost if we went ahead with the merger? You said that it is useful to go to one body for some things and the other body for other things, but what might get lost in the merger if it is a cost-saving effort?

Stephen Cranston: I do not think that anything would be lost. I meant to say that that would be a benefit of the merger—that you could put one application to the combined body. I think that resourcing was one aspect of the rationale for the merger. As we have said with regard to the commission, there is not a lot of fat to be trimmed, and we do not want the merger to be seen just as a way of saving money and reducing capacity—

Ariane Burgess: And reducing resource—

Stephen Cranston: Yes.

Ariane Burgess: Are there any other comments on that?

Eilidh Ross: [*Inaudible*.]—substantive Land Court work. I am non-practising, so I have no comment to make.

The Convener: That brings our questions to an end. Thank you for your evidence this morning, which has been most helpful.

Before we close, I will go back to the question that Rhoda Grant asked midway through the evidence session. I think that she gave you a heads-up about what we might ask at the end. Eilidh Ross, you touched on the fact that the bill is perhaps just a case of taking the low-hanging fruit by making little changes and changing things at the edges and that, ultimately, a bigger piece of

legislation is needed. Should anything else be included in the bill at this stage, or are we looking at it as a step towards greater crofting reform?

Brian Inkster: I think that we have answered the question. There is a section that we have not discussed, and I do not know whether you are willing to allow me to discuss it.

There are unintended consequences arising from section 9, and that should maybe be looked at. I did not cover that fully in my written evidence, but those consequences have occurred to me since I submitted my evidence. If the committee is willing to listen to me speaking about them, I would be happy to do so.

11:15

The Convener: We probably have five minutes left.

Brian Inkster: That will be enough. Section 9 introduces a new section 19BA(1) to the Crofters (Scotland) Act 1993, which states:

> "The Commission may, on an application from an individual who is the owner of a registered croft that is vacant, determine that the applicant is the owner-occupier crofter of the croft."

That is an important provision and it was seen to be needed because, at the moment, if somebody has effectively bought a big chunk of a croft, they do not have owner-occupier status. The only way to resolve that is to go through a conveyancing process and put in a new tenant. They have to go through an expensive process to make themselves an owner-occupier. The new section will allow the commission to do that on application.

What has been missed here is that, in most cases where that situation arises, there are separate owners of the overall croft. If Mr A owns the bulk of the croft but a small part is owned by Mr B, the crofting register shows them as joint owners but it does not define the division of ownership. That appears on the land register. The proposed new section of the 1993 act says that an individual who is the owner of a registered croft will be only the part owner of the croft and not a whole owner. The legislation needs to say that, when they apply, the owner needs show what part of the croft they own and that they are seeking to become the owner-occupier of that part. The legislation needs to be reworded to cover that, otherwise it will not work as envisaged.

The Convener: Thank you. That is very helpful. We certainly looked at some of the differences between tenanted crofters and owner-occupiers when it came to the test of whether someone was fit to be a crofter. That did not exist for owner-occupiers, but we have certainly looked at whether it does for tenants.

Are there any other points?

Stephen Cranston: I just want to highlight what is in our written evidence about succession. Section 16 of the Succession (Scotland) Act 1964 is not an easy read, so some tidying up could be done there. Whether that can be done through a crofting bill might be a question, but I just wanted to highlight what is in the submission.

The Convener: Thank you very much for your contributions this morning. I will ask you to remain seated while the committee deals with our final agenda item, which should be very quick.

Subordinate legislation

Plant Health (Export Certification) (Scotland) Amendment Order 2025 (SSI 2025/241)

11:18

The Convener: Our next item of business is consideration of a negative Scottish statutory instrument. Do members have any comments?

As there are no comments on the instrument, that concludes our public proceedings.

11:18

Meeting continued in private until 11:40.

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Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447

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

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