OFFICIAL REPORT
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Rural Affairs and Islands Committee

Wednesday 29 October 2025

Session 6

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RURAL AFFAIRS AND ISLANDS COMMITTEE

29th 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:

Dr Josh Doble (Community Land Scotland)
Sandra Holmes (Highlands and Islands Enterprise)
James MacKessack-Leitch (Scottish Land Commission)
Jackie McCreery (Scottish Land & Estates)
Rhianna Montgomery (NFU Scotland)
Anne Murray (Comhairle nan Eilean Siar)
Donna Smith (Scottish Crofting Federation)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 29 October 2025

[The Convener opened the meeting at 09:03]

Crofting and Scottish Land Court Bill (Stage 1)

The Convener (Finlay Carson): Good morning, and welcome to the 29th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I ask everyone to ensure that their electronic devices are switched to silent.

Our first agenda item is consideration of the Crofting and Scottish Land Court Bill at stage 1. At today's meeting, we will take evidence from representatives of the crofting community. I will invite you all to introduce yourselves in a moment.

We have allocated around two hours for the discussion. As we have quite a few participants, I ask everyone to be succinct in their questions and answers. Please indicate to me or one of the clerks if you wish to participate at any point. Please understand that there is no expectation on you to speak on every question, particularly if you feel that the point has already been made or that the discussion does not relate directly to your area of expertise. Also, you do not need to operate your microphones—we have a microphone operator at the end of the table who will do that for you.

We will kick off in a clockwise direction. I ask Jackie McCreery to introduce herself.

Jackie McCreery (Scottish Land & Estates): Good morning. Thank you very much for the invitation to be here. I am from Scottish Land & Estates. We represent the interests of landowners and landlords in crofting areas.

James MacKessack-Leitch (Scottish Land Commission): I am policy and practice lead at the Scottish Land Commission, which is a non-departmental public body advising Parliament and Government on land reform matters.

Rhianna Montgomery (NFU Scotland): I am from NFU Scotland. Thank you for the opportunity to give evidence today. We represent farmers and crofters. I look after our dedicated crofting Highlands and Islands committee.

Dr Josh Doble (Community Land Scotland): Good morning. Many thanks for the invitation to speak. I am here on behalf of Community Land Scotland, which is the representative body for Scotland's community landowners, which is a movement of people taking control of land, buildings and assets to shape their own futures. We have around 140 members all around Scotland, including community landowners from major crofting estates and smaller assets in inner-city areas. Many of our founding members in 2010 were crofting community landowners, and there is a particularly close relationship between crofting and community land ownership.

Sandra Holmes (Highlands and Islands Enterprise): Good morning. I am with Highlands and Islands Enterprise, the Scottish Government's economic and community development agency for an area that extends to about half of Scotland and that coincides with the crofting counties. Also, in a personal capacity, I should perhaps declare that I am a crofting tenant and a member of the Scottish Crofting Federation.

Donna Smith (Scottish Crofting Federation): Good morning, everybody, and thanks very much for the chance to engage with the committee on this topic. I am the chief executive of the Scottish Crofting Federation, which is a membership organisation that represents crofters and crofting.

The Convener: Thank you very much. Did you want to say something else, Josh?

Dr Doble: I should declare that I am a member of the Scottish Crofting Federation, too.

The Convener: You are all most welcome. Thank you for giving your time this morning to help us with our deliberations.

We have five themes for discussion, with probably half an hour per theme, and we will kick off with the environmental use of crofts. I would like to hear your views on section 1, which revises the duty on crofters to allow for a third and distinct option for croft land: environmental use. In the evidence that we have already heard, there have been calls for greater clarity on how the term "environmental use" will be defined, so we would like to hear your views on that. Who would like to kick off?

Rhianna Montgomery: We are concerned about the vague use of the term "environmental use" in the bill. We support crofters contributing positively to biodiversity, carbon sequestration and landscape health, but they must do so while remaining productive.

We would like to see more acknowledgement of active land management by possibly rewording the bill to make the term "active management for environmental use". Our members are concerned that, without a clear definition relating to active land management, there might be a risk of land being abandoned under the guise of environmental purposes.

The Convener: Thank you.

At this point, I must apologise—I have a screen right in front of me, so it should not have been difficult to remember, but we also have Anne Murray with us. Anne, would you like to introduce yourself? I apologise for missing you out.

Anne Murray (Comhairle nan Eilean Siar): Good morning. I am the chief officer for economic and community regeneration at Comhairle nan Eilean Siar, the local authority for the Western Isles.

The Convener: Great. Thank you very much—and, again, apologies for missing you out of the introductions.

Donna, did you want to come in?

Donna Smith: I suspect that quite a few of us are broadly on the same page on this. We have no issue with such a purpose being included, other than that it needs to be stronger than it is. As everyone will be aware, one of the biggest issues that you will see if you travel around the crofting counties is neglect of crofts, and we cannot allow the inclusion of this purpose to become an excuse or a valid reason for people to say, "Well, I'm rewilding my croft, so I'm doing nothing."

We appreciate that the bill as drafted talks about "planned and managed use", but we think that that could be made stronger so that it is absolutely clear that it has to happen as part of some intentional design, with written-down objectives or outcomes that set out clearly what you are trying to achieve. Of course, that raises all sorts of questions about who will review that and check that it is happening, but if we are going to introduce such an option, the wording has to be much stronger than it is. After all, we see this sort of thing happening all over the place. You can see how easy it would be for somebody to say, "I'm just rewilding."

The Convener: Do you have any examples of that happening at the moment? How does the Crofting Commission deal with cases of abandoned crofts where people are suggesting that they are still being used for environmental purposes?

Donna Smith: It is an interesting question. We are aware of some such cases. I am certainly aware of one on Skye, which we recently visited, where the tenant is making that claim. It also brings in the residency question—all of this is combined. That individual claims that they are ordinarily resident although they have been on the croft for only a handful of days in several years, and they claim that they have a plan to rewild the croft for biodiversity purposes. How can they do any of that if they are not on the ground and managing it actively? There are, absolutely, cases of people trying to get away with that.

On the question of how the commission manages it, I cannot speak for the commission, but, broadly, whenever we are out and about, speaking to our members, the loud message that we get is that everybody would like the commission to regulate much more on both residency and neglect, because they do not see enough of that happening at the moment.

The Convener: Do you think that the powers in the bill are strong enough and that the definitions are clear enough? Do you think that those provisions would need to be amended at stage 2?

Donna Smith: The powers are there. There is a breach of duties process. I know that we will get on to that later.

Some of the definitions need to be tightened up. We would particularly like to see the "ordinarily resident" definition tightened up. At the moment, it is left as a matter of policy—I know that the commission is discussing the residency policy at its board meeting, probably right now as we speak—however, if we are to be absolutely clear on that in the future, we would welcome consideration of whether something could be included in primary or secondary legislation to clarify that definition. There is existing case law—it is around tax, but the principles are the same—that fairly well describes what a definition might be. We would welcome some thought about whether something along those lines could be considered, to make the position absolutely clear for the future.

Jackie McCreery: The landlord's consent is not required for the environmental use of the croft, which is as it should be. I note that the one restriction is that the environmental purpose should not adversely affect the use of adjacent land. I do not know whether Josh Doble will agree with me, but we could probably do with a wider protection that provides that the environmental use should not adversely affect other crofters and the landowner's interests. What happens on a single croft could impact on those around it.

It is slightly odd that environmental use is really just a heading. There is no requirement for a positive environmental benefit, both here and in relation to common grazings. It would be good to require some positive environmental benefit, because, at the moment, it seems that the requirement is not to do any harm.

Those of us who are on the stakeholder group with the Scottish Government have already talked about this, and I think that the officials have taken on board some of the concerns that have been raised. Hopefully, changes will be made at stage 2.

Dr Doble: I agree with a lot of what has been said already, but I will add a couple of points. It is important to say that, in principle, we are very welcoming of the inclusion of environmental use of crofts. It is a positive development.

Notwithstanding that, there is an issue around definition, and there are some risks in not tightening up that definition. Those risks have been covered in some of the points that have already been made—for example, the risk that it will encourage absenteeism and lead to a rise in speculation. The potential impact on neighbouring crofts should definitely be considered.

A risk that has not been discussed yet is the prevention of the future cultivation of the land—we should make sure that there is no detriment to its use for agricultural purposes in the future.

We have suggested wording for a definition of environmental use. It would be something along the lines of

"any form of use which is intentionally designed and systematically managed to deliver environmental outcomes",

as Donna Smith was saying. That nuance needs to be discussed now, including whether it sits in the bill or whether it is included in regulations afterwards. That is probably an active point of discussion for the committee. There could be a benefit in tightening up the wording in a way that does not create bureaucratic issues down the line.

Sandra Holmes: We, too, support the inclusion of environmental use as a legitimate form of land use. It is important that crofting legislation remains responsive to the evolving environmental and land management priorities. I agree with other witnesses—we feel that the current definition that is not really a definition does not go far enough. We would like to see proactive, nature-positive outcomes that deliver something beneficial. For example, "planned and managed" could equate to planting Sitka spruce on peatland, which we now know is ecologically damaging. We would like the bill to go further.

09:15

Ariane Burgess (Highlands and Islands) (Green): Josh, I want to come back to your point about the wording of "environmental use" and what people have said in general. You may not be across it, but the Natural Environment (Scotland) Bill is going through the Parliament. Have you thought about the connection between what might need to be said in the crofting bill and the natural environment bill?

Dr Doble: I probably am not across it enough to give a proper answer. As we have seen with the community right to buy and the crofting community right to buy, which we will probably discuss at some point, getting legislation to be as joined up as possible makes a lot of sense. If there are aspects of the natural environment bill that would impact the environmental use of crofts and there is a way of future proofing what environmental use of crofts might look like in any stipulations that might be in the natural environment bill, it would make good sense to ensure that the two pieces of legislation speak to each other, considering that we are in the process of stage 1 debate and scrutiny.

James MacKessack-Leitch: I largely agree with what has been said so far, although I add a couple of extra notes of caution. First, on overdefining environmental use, there is a parallel with the Land Reform (Scotland) Bill, part 2 of which proposes that a new model lease be developed with an environmental focus. As Sandra Holmes was saying a minute ago, we now know that things such as tree planting on peat are bad. As Josh Doble has noted, it will be important to have flexibility in the future, such as options to bring land back into cultivation, perhaps through agroforestry or techniques that have not yet been developed. As I said, I hope that the new model lease will be included in the Land Reform (Scotland) Bill that is currently being debated in the Parliament. That will link to a different form of tenure in a slightly different sector.

Anne Murray: I will try not to repeat what anyone else has said. From the views that have been passed on to me and as is noted in my response, there are some concerns about the definition of environmental use and some risks that it might be an easy option for the way that people put their crofts to purposeful use. We also need to strike the right balance. It is important that crofts are still used for livestock. Different crofters are concerned about the direction of travel and the right balance being struck so that the utilisation of crofts for livestock is still promoted and supported. At the moment, that can be quite challenging.

Rhoda Grant (Highlands and Islands) (Lab): Crofting is for agricultural use and sustainability. Some time ago, we heard from a group of crofters and smallholders that many of them had already reached net zero and were sequestering carbon. Should environmental use be linked to agricultural use, so that you cannot just say that you are rewilding a piece of land and walk away—you would need to have agricultural production that is environmentally friendly? Would that be a different way of looking at it? Are we missing something about how we could protect nature through crofting?

Donna Smith: I had already put my hand up to speak—I think that you read my mind, Rhoda. There is something about ensuring that land use,

whatever it is, is integrated in some way. For instance, I was going to flag an example of a crofter in Skye having worked hard to take on a croft. The croft that they managed to secure with the funds that they had available to them was previously planted with trees—there was no real plan or anything else. The plantation failed, but the crofter has inherited a croft on which the agricultural land is covered in mounds from where all the failed trees were planted. The crofter will have to do an enormous amount of work to bring that back into cultivation use for agriculture.

I guess that this goes back to the "planned and managed" aspect, but we need to make sure that, for example, people cannot just blanket an area and that is it. The approach has to be considered and thought out with respect to a balance of land uses, so that people are not destroying the land for the future use of others who come along behind them.

Rhianna Montgomery: I agree with Donna Smith that integrated land use is really important. Crofters want to be able to support environmental targets while carrying out agricultural activities, so it is important to have wording that allows them to do that while not having blanket things happening.

Dr Doble: Rhoda Grant asked a very good question, which brings to mind a couple of thoughts. As Donna Smith said, we need to get the wording right and have something like "intentionally designed and systematically managed", so that it cannot just be abandonment.

The point that was raised earlier about people being ordinarily resident is also important. That would mean that, even if a croft was used almost exclusively for environmental purposes, the person who was responsible for that would be within the crofting township, part of the wider community and integrated into township life. I hope that we will touch on that in later themes, but it is incredibly important to ensure that whoever manages the croft is embedded in the wider township and is contributing to that wider culture.

I also agree with the point that Rhoda Grant was driving at around crofting as a potentially very low-impact form of agriculture that should be supported. We should not lose sight of the fact that it is a socially resilient and potentially environmentally resilient way of creating food that should be supported. I completely agree with the sentiment that we should not lose sight of the fact that crofting is primarily about agriculture, but, as James MacKessack-Leitch said, I would be wary of tying us into a definition that is too tight and that limits what could be a very beneficial land use for a particular township in some circumstances. We should not create too much of a straitjacket.

Jackie McCreery: I support what Josh Doble has said. The direction of travel for crofting over the past decade or so has been to allow wider activities and purposeful use. Some of the legal commentators who were at the committee a couple of weeks ago said that "environmental use" could probably fit within "purposeful use" anyway, but maybe it is good to have a direction of travel in the bill that encourages environmental benefit. That is the direction of travel in which we are going with agricultural holdings, where we are talking about facilitating sustainable regenerative agriculture and that kind of thing. Perhaps wording along the lines of "not inconsistent with future cultivation" could tie the thing together. At the moment, we do not have a food security crisis, but we could have one in the future, and public policy could turn right back round to production. We might want to encourage the use of the land for production again, whereas, at the moment, the policy driver is to allow wider use.

The Convener: I have a more general point. I did not previously know very much about crofting or how different it is from agricultural policy. A whole set of different outcomes are desired. In one of our previous sessions, Andrew Thin suggested that crofting could be the key to addressing rural depopulation and island depopulation in particular. How can we be sure that adding an environmental use provision does not detract from the overall outcomes that crofting is supposed to deliver?

Josh, you touched on the importance of townships. How might townships be weakened by including the environmental use provision? Are there enough safeguards and prioritisation, so that we will still achieve the outcome that crofting legislation is supposed to achieve?

Dr Doble: That picks up on the points that we have made about safeguarding against some of the potential risks. If environmental use is included but its definition is woolly and is not closely tied to people being ordinarily resident, you could see speculation on crofts. Natural capital market drivers could come into play on crofting land more than they do already, because that land would be seen as potentially being very profitable. There are people owning crofts who do not live near them and see them as an opportunity to plant trees for timber production or carbon credits.

Absolutely, there are risks, which is why it is really important to tighten up the definition a little through secondary legislation or regulation that sets it out more closely and makes a close link with the duty to be ordinarily resident—and with proper evidence showing that the person is, indeed, ordinarily resident, which we will come on to later. In that way, environmental use could become part of an integrated crofting system that is fit for the 21st century and might well include

some environmental measures and may reference agroecology or regenerative agriculture on crofts. Those things will be integrated into the system instead of being add-ons that could end up, inadvertently, in extraction from crofting.

Jackie McCreery: Crofting on its own will not repopulate areas. As Josh said, it is just a part of a bigger thing; we need employment, for a start. One of our worries about the bill is that it might diminish the role of the landowner or the estate, because the estate could have a role in providing and encouraging other forms of off-croft employment. After all, the sort of employment that we are talking about is not usually full time. Some other form of income is always needed, and those wider issues will need to be addressed as we try to encourage people into crofting.

Rhianna Montgomery: I agree with Jackie. I think that there are opportunities to tackle island and rural depopulation.

I also agree with Josh on the natural capital issue. We do not want large areas of land to undergo wholesale land use change, so the integrated aspect will be really important. As I said, there are opportunities here and there are ways of sorting this by, say, tying it to the residence duty and so on.

James MacKessack-Leitch: There is also the broader question of land use planning. Obviously, there are questions about what happens if a crofter goes down a very particular environmental-type route next door to someone else. Of course, plenty of crofts in the Highlands are not next to other crofts at all, and there are other new landowners who have different tenure arrangements and, indeed, owner-occupiers. Therefore, we should be thinking not just about the crofting system as a whole, but about land use planning at a more regional or local level and bringing decision makers together in order to come up with a plan. Such an approach might not be too dissimilar to the regional land use partnership pilots that are going on at the moment. Instead of every individual crofter, farmer or landowner doing their own thing or following their own particular path, things would be a bit more joined up and the sum of the whole would be greater than its parts.

Sandra Holmes: Highlands and Islands Enterprise's real interest in crofting relates to population. We see crofting as helping to root communities in our more rural areas, and I suppose that much of the benefit of the bill is that it should streamline and simplify crofting and, we hope, free up the commission's time to really focus on regulation. Indeed, I know that it is doing a lot of work on residency use.

Going back to the original point about environmental use, I wonder whether that might feel a bit more passive. If you do not have any animals, you might not have to be there twice a day or whatever. It is all about looking at this in the round; after all, crofting works really well when it is well supported and well regulated. That is absolutely critical to keeping our communities thriving.

We, in the Highlands and Islands, are on the cusp of huge opportunities, but a big constraint on economic and community development across our region is lack of housing. I am not saying that crofting equates completely to housing, but there is a correlation. Lots of houses in the Highlands and Islands are not being lived in. We want more people living in housing in the Highlands and Islands all year round, and a robust crofting system will certainly strengthen that position.

The Convener: Thank you. Did you want to come back in, Donna?

Donna Smith: I would just sum up by saying that, yes, safeguards are needed. This has already been touched on, but this is about not encouraging absenteeism or land speculation on crofts and about ensuring that the environmental uses do not prevent future cultivation. If we can safeguard those things and keep the people there, we will be good.

The Convener: Thank you. That brings us tidily to our next theme, which is the enforcement of crofters' duties, and questions from Alasdair Allan.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): It would be interesting to kick off a wider conversation about enforcement, given that it has been touched on already and has also been a continual theme in our visits.

What will the bill as drafted do to promote good enforcement of crofter duties? Some aspects have been mentioned already. We could pick out what will happen when duties are breached, or we could talk about the issues when people do not meet the residence requirements or other requirements. I am interested in focusing on how people feel the bill will address some of those issues.

09:30

The Convener: Who would like to kick off? Donna keeps catching my eye.

Donna Smith: Where to start? One positive change in the bill is that the process for dealing with a breach of the duties will be streamlined slightly, which is crucial. For those who do not fully understand the issue, I note that the current process for dealing with a breach of the duties is very long and complicated—rightly so, because it might result in people being removed from crofts.

At the moment, about the first six months of the process is spent trying to establish whether somebody has breached their duties, before it is considered what might be done to resolve the issue.

Every year, there are people who voluntarily admit, through their annual notice and such things, that they are not resident at their croft and are not cultivating or maintaining it. If my understanding is correct, the proposed change will, in such cases, allow the Crofting Commission to accept that the person is in breach of their duties, so the process can begin at that point rather than at the start. That change is definitely welcome.

The rest probably comes down to policy and how we handle the process. At the moment, folk have many opportunities to temporarily rather than permanently fix a breach of their duties. I do not know whether the system could be tightened so that it would be a bit harder to do that.

Alasdair Allan: There are issues with sub-letting, grazing and so on.

Donna Smith: Yes—all that stuff. However, that is probably a policy issue rather than a legislative one.

Another big issue that we keep coming back to relates to who can report a breach of duties that leads to the commission having to take action. The way in which the legislation is written means that the commission has to investigate only in certain circumstances. The definition of "crofting community" has been broadened slightly in relation to who can report breaches, but we feel that the definition is probably still not wide enough. The commission could still choose to ignore a huge swathe of people who might report breaches.

It is a difficult area. When you speak to crofters, you always hear that it is very difficult. At the moment, the onus is largely on neighbouring crofters in the township to report that the guy next door is in breach of his duties. That is very difficult for people, because, ultimately, that person will know who has reported them and, however the situation is resolved, might still be living next door to them. In a small community, that is a very uncomfortable position to be in.

How we address that is a tricky issue. We have had lots of discussions with members, and internally in our working groups, about whether we should further broaden the definition of "crofting community". We have spoken to the crofting policy team many times about the issue, so we appreciate that it is difficult to use geographical boundaries. It could be based on parishes or something else, but all those issues are quite difficult.

We have also talked about whether it would be possible to designate other official bodies, so that they could report breaches that the commission would have to investigate. That might be an option to consider. Could breaches be reported by established organisations, for example? It is difficult because, if the system were opened up so that anyone could report a breach that the commission had to investigate, there could be spurious allegations and so on. However, if inspectors from the rural payments and inspections division were out on the ground, inspecting somebody, and happened to see that the croft next door was neglected, should they be able to report a breach for the commission to investigate? Other established bodies might be able to report breaches. We have certainly been having that discussion a lot.

The Convener: What is your view on the Crofting Commission's decision to increase resources for its enforcement duties?

Donna Smith: We are trying to recover from decades of not enough action being taken. That is a big juggernaut to turn round, but we very much welcome the commission increasing its efforts in that regard. I hope that, over time, if momentum can be gained on that, that will start to send out a message. There is a whole other topic, which is the market in crofts, but I will not get into that just now. Real and proper enforcement of duties might start to turn round some of those things.

The decision is very welcome, but there is a long way to go. Enforcement must be consistent and it must build as we go if it is to make a real difference on the ground overall.

Alasdair Allan: I will pick up on your earlier point about reporting. I completely appreciate and agree with your point about the difficulties that are involved with that, but the bill goes some way towards taking away some of the pressure that was placed on the grazings committees in the previous legislation, 15 years ago. It does that, does it not?

Donna Smith: Yes, it does. In the same way that there was an annual notice for all crofters to complete, the grazings committees were supposed to produce a report every five years. That caused huge problems, for all the reasons that I mentioned. In effect, it meant that people in a township had to send the commission a report of who was and was not doing their thing, which immediately caused huge ructions in some areas. It is good that that has been taken away. It should be a choice. If people want to make a report, they can—that option is there—but not forcing people to do it is a good thing.

Jackie McCreery: The landlord has been added to the list of those who can report, which

our members have mixed feelings about. Some feel that that is a positive thing, because the landlord could be seen as being neutral if there are opposing views, and that it is positive if they want to take on that role. Others are a bit wary, as they do not want to get stuck in the middle of family disputes and that kind of thing. Not all landlords will use that option, but it is a positive addition. I agree with Donna that including some more neutral bodies could be useful. There could be parallels with the role of the land and communities commissioner in the Land Reform (Scotland) Bill. That provides a similar system for reporting breaches, with the ability to have anonymised reports sometimes, so there might be some useful crossovers there.

Rhianna Montgomery: Jackie McCreery has taken my point. It is difficult to find a balance between strengthening the provisions on the commission's powers and encouraging people still to feel confident about reporting breaches. As to who can report, the local community aspect is important. We would not want people who are well outwith that community to be able to report; it should very much be limited to the township. If you wanted to expand the crofting community, we would be supportive of that.

I want to touch on the streamlining of the enforcement of crofters' duties. We support that, but we would not support removing any specified deadlines for decision making. It is important to keep clear timescales.

Dr Doble: There is a lot of agreement this morning. I agree with Donna that the definition of a crofting community is too narrow. It creates a bit of a straitjacket when it comes to whose report the commission will listen to and act on.

Looking at the Land Reform (Scotland) Bill is very instructive. It was decided that communities reporting breaches by landowners whom they might have a conflicted relationship with does not necessarily work. Expecting crofters in the same township to report their neighbours is not realistic. Thinking through what an expanded definition of a crofting community might be would be helpful. We are broadly supportive of looking at it as the parish rather than the township.

We would also support a more proactive role for other organisations, such as the rural payments and inspections division and local community councils, in reporting breaches. We would also be supportive of not just crofters but aspirant crofters—that is, those who are registered with the Scottish Land Matching Service and are in the local area—being able to report breaches, because they obviously have a clear interest in the system working.

I would, absolutely, welcome increased resource for the commission. I think that there is broad consensus that the system is not working as well as it could and that resource for the commission and its being empowered to be more interventionist when it is looking at the enforcement of duties would be really welcome.

On landlords, I think that Jackie McCreery is right. It is broadly welcome that landlords can report, although that will be a conflicted power for them to have. Twenty-five per cent of crofts are on community-owned land, so there are a lot of community landlords of crofting communities. In egregious cases, reporting can be useful for a landlord, but mediation would probably be the first port of call.

A broader policy point is that, because there is a public interest concern in crofting working well, there is a policy rationale for a proportionate yet wide range of stakeholders being able to report breach of duties. We should not be afraid of expanding the list of who can report breaches, as has been done in the Land Reform (Scotland) Bill, as long as—I agree with Rhianna Montgomery on this—we do not have something that is too broad and that goes outwith what could reasonably be considered to be a crofting community.

Ariane Burgess: Clearly, reporting is a delicate issue. If a neighbour reports somebody, however it pans out, there is the issue of living with that conflict. As a representative of the Highlands and Islands, I know that a lot of amazing things are happening there, but I come across quite a bit of conflict among communities. It is heartbreaking that people have to live in that situation.

I have been thinking about that issue. Maybe this is not for the bill, but I feel that we need something—I would call it a soft infrastructure—to provide support and funding for people. Some of you might know about the Common Ground Forum, which is working well in the deer management space. We need something to recognise that conflict could happen in the crofting setting. We need to be proactive, recognise that and fund people who have the skills to manage conflict and to help people move through it. People might have a conflict, but they do not have to live with it for ever. When people come to the table and start talking to each other, that can help them to move on.

I feel that we need something, although that is not necessarily for the bill. At our previous evidence session on the bill, somebody used the word "clyping". I loved Josh Doble's point that it is in the public interest that crofting is working well. We maybe need to help people better than we are doing in the rural space. What are your thoughts on that?

Jackie McCreery: We are talking about a system in which people want to be regulated, which is quite unusual, so there should be a solution that everybody is happy with. A dependence on people reporting each other will, by definition, be divisive, so we need neutral bodies or at least bodies that can filter out vexatious reports. I think that someone mentioned the local RPID offices. If an office has a process for filtering out vexatious reports and can anonymise reports, that might work. As I say, people want to be regulated, because they see that as a benefit of crofting.

Sandra Holmes: We all want effective regulation, and reporting is a key element of that. The challenge is that there are quite a lot of tensions in crofting. The group of people who can report currently and the additional people who will be able to report if the bill goes through are quite a closed group. It is a community of interest that operates within a wider community. However, crofting does not happen in isolation, and crofting communities are part of a wider community. At the moment, those who can report are those who have a direct connection with the system as a tenant and, if the bill goes through, sub-tenants will be included.

To go back to Josh Doble's point about a public interest test, we support crofting because of the public benefits that it delivers for people. There should be an opportunity to report for local people who are outside the system—people who have a local presence and who care about the community and about crofting in the community. The only organisations that I can think of that could potentially fulfil that role are the community councils, but the approach would have to be based on evidence. In a previous evidence session, the Crofting Commission said strongly that it needs evidence to act, and I totally endorse that. However, it is worth having a discussion about the need to be accountable to the non-crofting people in the community.

09:45

Dr Doble: I will respond to Ariane Burgess's point in a moment, but I want to pick up on what Sandra Holmes said, which we would broadly support. It would be interesting and potentially challenging to navigate how the wider community of geography interacts with any kind of reporting of breaches. That might be a call for something more mediatory, but it is a relationship that can work incredibly well.

There is a lot of democracy and communal working between a crofting community and a community of geography, but the relationship can also be, and has sometimes been, slightly more fraught, so having mediatory ways of dealing with that would be really helpful.

On the point about whom those powers could be vested in, it would make sense for it to be the commission, but if the commission is also the regulator, it becomes a bit more challenging.

Sandra Holmes is right that there is a wider interest in having a crofting system that works, because when the local crofting community is functioning properly, it has a huge impact on the community of geography and we see the local area thriving. It is important to have a system in which the local geographic community can feel empowered to be a part of the wider crofting system while not having the same rights, duties and obligations. There would also probably need to be some kind of mediatory function. Ariane Burgess is right that soft-touch powers for such things would be really helpful.

James MacKessack-Leitch: Briefly, on the classes of people who might be able to allege a breach, a parallel with the Land Reform (Scotland) Bill would be instructive and potentially helpful.

On dealing with conflict, we can perhaps share some interesting learning through the role of the tenant farming commissioner at the Scottish Land Commission. The incumbent and previous tenant farming commissioners have been in post for almost a decade, and they have never had to use their full breach process powers under the legislation, precisely because the policy is to take a mediatory approach and resolve disputes as they arise, without having to resort to some of the harder backstops that are in legislation.

If the right backstop is in place, there is a bigger policy question about how conflict, when it arises, is dealt with through having the right people in post and the right processes in place to deal with issues before they get into formal procedures or ultimately end up in the Scottish Land Court, as was the case in the tenant sector. On where we can get to, there is a big policy development issue that can do a lot of the heavy lifting to resolve conflict before we need to get into legislative backstops.

Jackie McCreery: I agree. The tenant farming commissioner is a good example, although I am sure that, if you spoke to Rob Black, he would say that he does not want any more work. I do not think that he wants to bring crofting into his two days a week in the role.

The important thing to remember about the tenant farming commissioner is that the legislation specifically says that he or she must use their functions in a way that encourages good relations between landlords and tenants. His role—I am saying "his" because the current commissioner is a he—is set within the context of encouraging

good relations, and his primary function is not to regulate or enforce, although he has those powers if he needs to use them. That is helpful, but I am not sure how that sits with the Crofting Commission, whose primary role is to regulate, so maybe we need another land commissioner.

Rhianna Montgomery: All of my points have been covered. I definitely agree with the link to the tenant farming commissioner, and I think that supporting crofters to sit down and resolve issues in a more open way is definitely positive.

Donna Smith: After listening to the discussion about who can report and how that will be managed, I want to take a throwback to things that used to happen but have stopped over the years, which I guess partly leads us to why we are where we are today.

A few years ago—when I say a few years, I am probably talking about a couple of decades or so—the commission used to have staff whose job was to go out and survey townships, have a look at what was happening on the ground and feed that back to the commission. All of that stopped. The assessors who were out on the ground were in volunteer roles, which was complicated. There are many reasons why the assessors are not doing that job any more. The point is that there were many more eyes on the ground to feed back a view of what was happening in their area. We still have the commissioners, who are in their areas, but I am not sure how much of their time is spent feeding information in.

That means that the commission had tools in the past that have stopped being used for various reasons, such as resourcing issues and whatever else. I guess that those assessors did a good job, because having them meant that a neutral person was coming in, looking at what was happening on the ground, finding out some information and then going back. That is kind of the job that the grazings committees were being asked to do under the provisions that are there at the minute.

Lots of stuff used to happen in the past that maybe we can take lessons from on how to handle reporting. You would not be creating conflict directly between people in a township if you were able to use some of those approaches instead.

The Convener: Is there a role for technology in this? It is probably unlikely that we are going to get a lot more boots on the ground, as they say. Is there a role for light detection and ranging or—dare I even say it?—for artificial intelligence in triaging and filtering out some of the spurious and vexatious claims? Is that a possibility?

Donna Smith: I probably do not know enough about the technology to say that. I guess that you could fly a drone over a township as a starter.

The Convener: Possibly.

Dr Doble: I was going to talk about the tenant farming commissioner, but I will first respond to the point about technology. Some forms of technology could be useful but, ultimately, a lot of the decisions would need to be made through a subjective human lens to understand their wider impact. I would be nervous about assuming that AI could sift through and check spurious cases.

I do not mean to disagree with James MacKessack-Leitch, but I would add a word of caution about the tenant farming commissioner having a similar role. Jackie McCreery is right that that is a different function. You could have a role akin to that of the tenant farming commissioner to mediate the relationship between a crofting community and the wider geographic community or between a crofting community and the landlord.

However, on the reporting of breaches, having looked at the system and heard from people that it is not working, I think that we need to beef up the regulatory functions to get the system working and get more crofts back into productive use. There is a case for mediation, but I do not want us to lose sight of the importance of reaching for regulation, because we are at a point where everyone is crying out to be regulated. The commission needs to be empowered to do more regulation. We should not lose sight of that.

The Convener: Does Donna Smith want to comment?

Donna Smith: This is about education. The message needs to be out there, and really good regulation will help that to happen.

I will give an example of where something is wrong with the current system—not with crofting itself but with how things are happening in the background. An accountant friend of mine contacted me to say that she had a crofting question. She was doing the end-of-year accounts for a client. He said, “I’ve bought a piece of croft land in Skye for a substantial amount of money”—it was probably six figures—“but I don’t appear to have received title for it. I had to put down the name of a natural person, rather than the company, to get this croft.” What had clearly happened was that this chap was trying to offload some profit, so he bought what he thought was land but was actually a tenancy. Where was the education in that whole process? Where did somebody say, “You’re buying a tenancy in a regulated system”? We have to make all of that work, too. Such cases should not be happening.

The Convener: That is a good example.

Sandra Holmes: Donna Smith has covered my point, but I will speak to it briefly. I have an example of a situation that I was involved in 20

years ago in my township. It was not to do with a breach, but there was definite and significant conflict in our township. In the middle of our common grazings is a very popular, tourism-focused village. Over the years, different people will come and go, but the culture of crofting is still really strong. Lots of representation was coming from the non-crofting members of the community about cattle—it is a cattle-owning township—essentially grazing in the village. That issue was never going to go away.

That was 20 years ago, and we got significant and hugely helpful support from the commission. A person from the commission came out to our township, and a big part of their personal role was to speak to us, as crofters, and to the community about crofting, because education has to go both ways. That was about saying that we have crofting rights and we want to exercise our grazing rights responsibly. We want to take into account what the wider community feels, because we all live there—these are my neighbours. Through that process, we got to a position where we are all living pretty much in harmony, even though there are significant tensions.

Having an independent person who understood crofting communicate with both crofters and the wider community was instrumental. That was a long time ago, but we could not have made progress otherwise. That was about relationships and people, and what the commission did was hugely beneficial to us at the time.

Rhoda Grant: That brings me back to the previous crofting legislation. Prior to the Crofting Reform (Scotland) Act 2010, the commission used to have a crofting development role, which was taken off it and passed to HIE. It seems to me that the people Donna Smith was talking about, out on the ground, were not only looking to see what was right and wrong; they were also advising people, working with communities and pointing them in the right direction for developing and growing their business. There was an education role as well as a development role.

When that role was taken away, I thought that it was perhaps a backward step. Should that role be resurrected for the commission to do? The commission is closer to the crofting communities. Sandra Holmes is here from HIE, and it would be interesting to hear from her, given her experience as a crofter, her experience in HIE and her knowledge of what the commission used to do. I am putting Sandra on the spot, which is perhaps not very fair, given that she is employed by HIE.

Sandra Holmes: I can speak about that briefly. When the commission had that role, things worked really well in my experience from one occasion. The crofting development remit that came to HIE was not the remit that the commission had; it was a different remit. Basically, HIE was being tasked with supporting communities in crofting areas, but it was not giving direct crofting support. We did not have colleagues who were specialists in crofting, and we no longer have the remit that we had for some years—it has gone back to the commission.

Speaking personally, but also from a HIE perspective, I would say that the supporting crofting side of things sits better with a body other than HIE, because we do not really do one-to-one support. We are working with communities as whole communities, and that crofting development remit was different, as I said. What the commission was doing was not replicated by what HIE was doing, and HIE does not have that responsibility at the moment. It has gone back to the commission, which has a developmental team, although it is a very small team. It is doing a lot of good work on supporting crofters and understanding succession planning, which is a key concern.

The average age of a crofter is quite high, and it is a matter of ensuring that crofters are making proper provision for what will happen to their croft in their will or if they are not able to carry on using the croft. The commission is active in this area, but it is perhaps not working through locally specific challenges and issues on the ground. I am not hugely familiar with the subject, so I will stop there.

The Convener: We are bang on time, having had two half-hour slots. We will now move on to the Crofting Commission's powers. I am delighted to have Beatrice Wishart next to me again today, and we now move to questions from her.

Beatrice Wishart (Shetland Islands) (LD): Thanks, convener. It is good to be back in person.

The next theme is the Crofting Commission's powers in sections 8 to 14. I know that my colleague Emma Harper has a question on section 10. I would be interested to start the conversation on the three-croft limit in section 8 and the view that it is a somewhat arbitrary figure. Could we open up a conversation around that?

Rhianna Montgomery: Although we welcome the implementation of a fast-track system for family assignations, when we were carrying out our consultation with our members across the crofting counties there was a spread of different opinions about the three-croft limit. That was most significant with crofters in Shetland, who had concerns about its potential to stifle active crofters, because of the different patterns of ownership. People in other areas did not see the limit as an issue. It is important that a flexible, regionally sensitive approach is used.

Another potential option to alleviate that concern could be to widen the scope of the condition to any

family member assignation, rather than having that arbitrary figure.

10:00

Donna Smith: I would probably make the same point. The three-croft limit feels a bit arbitrary, given that crofts vary so much in size, and we have discussed a number of approaches, including having a hectarage threshold. I appreciate that the three-croft limit does not represent a hard stop; it is just that the matter will be looked at in more detail if that limit is reached.

It comes back to the question: what is the policy? Is the policy to keep as many people as possible in an area? In that case, you might well want to limit the number of crofts that an individual can sit on. I know of examples out there of people pretty much collecting all the crofts in a township, which shuts everybody out. Is that what we are trying to deliver? I understand that that is what this approach is trying to address, but it is probably a matter of finding the right balance that is workable on the ground.

Even if we were looking at hectarages, the fact is that the size of a croft in the Western Isles is, on average, significantly smaller than the size of a croft elsewhere in the country, so that approach feels a little bit arbitrary, too. Perhaps that is where regional considerations come in, but those options are there for the commission to consider when it comes to delivering this policy. Whether the bill needs to be changed, though, I am not sure.

Anne Murray: Similarly, we appreciate why there are differing views on this and acknowledge the challenges of getting this balance right from a policy perspective. When it comes to supporting the population in rural areas, it is important that there is a focus on supporting crofters on individual crofts. We also need to look at the land use happening on the ground, and we are seeing good practical use being made of the land and people being able to ensure that the land is used. It is a very difficult issue, but the focus needs to be on issues of residency and active use of the croft instead of our getting too hung up on people who are using, or who have access to, more than three crofts.

Jackie McCreery: On assignation, we feel that, in some ways, the commission does not really need to be involved as much in a straightforward family assignation. The landlord, the crofter and the assignee should be able to organise things themselves.

I agree that knowledge of what is happening on the ground is really important. The irony is not lost on me that hectarage might be arbitrary in this context and not in another, but I do agree that the three-croft limit is an odd choice, given the difference in sizes. There is also the issue of what people are doing with them. You could have three crofts that are well used and productive and one that is not, and making a croft productive will probably be better for the wider community. There needs to be more flexibility instead of there simply being a three-croft cut-off.

Dr Doble: I want to pick up on a few points that have been made. We would welcome the commission having some oversight—or having the ability to have oversight—of the process. Public notice and proper consideration of assignation applications are a key part of crofting regulation, and allowing occupiers and crofters to determine that sort of thing for themselves could have unintended consequences. We think that, on balance, the position that has been arrived at in the bill is good, but we need to be wary of this kind of fast-track assignation and any unintended consequences that it might have.

I broadly agree with what people have been saying about the three-croft limit. It is fairly arbitrary, because crofts can vary in size, and there needs to be some consideration of agricultural viability and, more importantly, the point that Anne Murray made about active use and whether the person who is taking on the tenancy or ownership is going to be ordinarily resident.

I take Jackie McCreery's point about the arbitrary nature of hectarage, but I think that it could be helpful if it sat alongside this as an alternative instead of being a replacement. Basing the limit on hectarage would give a sense of agricultural viability, and I would support that. These things are always slightly arbitrary, but, as we have seen in other pieces of legislation, things have to be decided on.

Jackie McCreery: Yes, and it all comes back to the policy. If the policy—and the public interest—is all about having small-scale forms of land tenure, it can be applied, I guess, through a hectarage approach, as long as it is in the public interest and as long as it is well justified and explained to everyone.

Dr Doble: I agree with Jackie McCreery, and Donna Smith also made that point. We need to step back and look at the policy intent and purpose of the provision, because that dictates how many crofts or what hectarage might be appropriate. We need to step back and look at the outcome and be wary of the fact that there could be unintended consequences. We need a clear sense of the purpose of the provision, because it is a slight interference in established practice.

The Convener: Emma Harper has a supplementary question.

Emma Harper (South Scotland) (SNP): It is on the back of Beatrice Wishart's question and is on

ownership of owner-occupied crofts. Currently, there is no explicit restriction on who may own an owner-occupied croft, so it includes natural persons, which are people, and non-natural persons, which might be companies, trusts or partnerships. Section 10 introduces a new legal restriction that is aimed at limiting ownership of owner-occupied crofts to individuals only. The intention is to ensure that owner-occupied crofts continue to be held by individuals, who can then fulfil the aims of cultivation, agriculture, food production and so on. I would be interested to hear your thoughts on that section.

Dr Doble: A few of us might have similar views on the provision. In principle, I absolutely agree with the intent behind it. Natural persons, rather than legal entities, should be the only people who can have owner-occupied crofts, which would mean that you would get real people living and working on the land. That should help to address the kind of speculation that you could see from private companies that we discussed earlier. However, it has been raised with us that there are a couple of potentially quite damaging unintended consequences, so we think that some flexibility needs to be inserted into the provision.

Two examples that have been raised with us and others relate to woodland crofts and rural housing. If you want to build housing on croft land and want to apply a rural housing burden, you cannot have an owner-occupier who is a legal person. You need to have an entity that owns the site, so you need a rural housing body, which, by definition, is not a person. You need a legal entity that owns the land for the housing project and rural housing burden to go ahead. Therefore, there needs to be some kind of exemption in the provision to allow flexibility when a rural housing burden is attached to a croft.

Beyond the issue of croft creation with housing, particularly in relation to woodland crofts, there could be situations in which an owner-occupied croft comes up for sale and a local community organisation wants to acquire it to bring it into wider community use. That will often be to have a housing site and to put a rural housing burden on it, so the two points are linked. Again, the community body is not a natural person; it is a legal entity. There is potential to restrict community bodies from acquiring crofts to bring them back into wider community use.

Section 10 would prevent that from happening, because a community body could not legally acquire the croft. How we get around that without creating a lot of loopholes is a point for discussion for the committee. There are unintended consequences that I would want to be flagged in the stage 1 report, and there probably need to be amendments to change that. We will probably suggest such amendments at stage 2. We want that nuance to be addressed by the committee and played out at stage 2.

The Convener: Before I bring in other witnesses, I point out that the Crofting Commission, when it gave evidence to the committee on 24 September, said that amendments would be introduced at stage 2 to permit community-led or partnership models of croft ownership. In your responses, you might want to reflect on what safeguards there might have to be if such amendments are introduced.

Donna Smith: Josh Doble has covered the issue eloquently, so I will not add to that. However, I would like to discuss owner-occupier crofter status a bit more, because it is tied to that issue, and you might end up solving one problem with another. At the moment, the transfer of owner-occupied crofts works in the following way. If I am an owner-occupier crofter and sell my croft to Jackie McCreery, she immediately becomes an owner-occupier crofter. If I am a tenant and assign my croft to Jackie, she has to apply and prove that she is going to be resident, that she has a plan for the croft and that she knows what she is doing. Any transfer of money or whatever relating to the sale of the tenancy is held until that process has been gone through.

Many of the changes in the Crofting Reform (Scotland) Act 2010 were introduced to create parity between tenants and owner-occupier crofters, but there is this one glaring omission. Owner-occupied crofts, like any other freehold, just change hands without anybody having to justify anything to anybody. The federation and our members feel quite strongly that that needs to be looked at. It would be a big change, so I do not know whether it is a matter for this bill or whether it should be considered further down the line.

We cannot stop land purchases going through, but there could be a moment when somebody has to think, “Oh, right—I am buying this land and it is a croft, so I have to have a plan and know what I am going to do. I must be resident and then apply for that status.” That might mean that the person who owned the croft would not be the crofter and that somebody else would apply to be the crofter afterwards. We would like the topic to be thought about in some way.

In relation to the market and the issue with limited companies, as I understand it, very few crofts are owned by companies. Of course, nobody wants that—that is not the intention—so a change to prevent that would be good. However, lots of people with owner-occupied crofts have just bought a nice house in the countryside. That is probably the bigger issue, and we would welcome a discussion about it.

The Convener: You talked about whether this bill is the right legislation in which to include such provision. I am reading between the lines. Are you suggesting that, in the absence of the safeguards that you have set out, lodging amendments to allow community-led or partnership models would be a bit premature and that that should be left for a future bill, after we have considered the whole issue more holistically?

Donna Smith: It is interesting, because the bill includes a facility to allow a certain collection of people to apply for owner-occupier crofter status, so that mechanism is already partly being introduced. That is for people who are currently locked in a status of being a landlord of a vacant croft. That is a largely historical issue from when people did not understand that, to be the owner-occupier crofter, they needed to own the croft in its entirety. At one point in time, people might have sold off a field without dividing and might not have realised that an unintended consequence was that they were no longer the owner-occupier crofter.

The bill includes a provision that would allow those people to apply to be granted owner-occupier crofter status. As I understand it, that process will largely follow the one for assignation. However, the right for people to object has been removed, which we think is wrong. If people can apply for crofter status in the same way as tenants do, people should be allowed to object. That mechanism is partly being introduced, which is why this might be a good time to have this discussion, in order to build on that.

Jackie McCreery: On Josh Doble's point about exemptions, I worry about the list being too narrow, because there will be all sorts of situations that we have not thought of. The previous landlord of the croft might even want to buy it back to re-let it, if they had a bigger plan to take other land. There could be bigger plans, so we would not want the list to be too restrictive, or there could be a delegated power to update the regulations if that was needed.

The Scottish Government is looking at the issue, which I know has been raised by the stakeholder group. We need to see what amendments are lodged at stage 2, but it might be useful to have a regulation-making power so that we can keep an eye on the issue.

Sandra Holmes: I agree with all the points that Josh Doble and Donna Smith have made. We are keen for section 10 to include provisions to allow socially driven or—in relation to Jackie McCreery's point—non-natural persons to acquire a croft. We are now seeing more demand from communities seeking purchase crofts. It is not new. In the early 2000s, HIE and the Scottish land fund supported the community in Colonsay to buy a tenanted croft, which was purchased by the sale-by-nominee provision, so it technically became an owner-occupied croft. That was purchasing a large croft with a view to dividing it to create more crofts. More crofts were created from one croft, which was a positive thing for a very fragile island community. Much more recently, in the past year, we have supported that same community to buy an owner-occupied croft. We are seeing quite a bit of demand just now.

10:15

Communities have also got involved in community-led housing, because there are huge challenges, and access to affordable housing is a huge challenge. If people are not getting into crofting through a family assignation, most people have to pay to get into it. Communities are keen to provide affordable pathways into crofting, so having it would be a positive measure if the bill allowed for socially innovative approaches.

The Convener: We need to define communities a bit more strictly. The committee has heard evidence about communities, and there are broad definitions of a community, whether it means people who live in a locality or a community of people who share a certain viewpoint. What is your definition of communities? Communities would have the right to buy crofts. How would you define that?

Sandra Holmes: The example that I was referring to is quite selective and tightly defined. It is essentially similar to communities that could use the community right to buy. It is a whole-community geographic organisation that is accountable to the local community, so it comprises resident members of that local community. However, it requires more thinking, because there will be other organisations that do not fit within that tight definition that could still be looking to undertake projects or make acquisitions that will deliver the same outcome. This is very much about looking at the outcome and having something where the owner is creating a tenanted opportunity.

It requires more thought, but I am coming at it very much from a community perspective, because that is where we are seeing demand. However, it does not mean that demand would be restricted. There could be some other organisations that would also be minded to support populations through affordable routes into crofting.

Dr Doble: I agree with Sandra Holmes. If we need definitions of community bodies that are structured as legal entities, we have plenty of tight definitions in previous land reform acts and the Land Reform (Scotland) Bill. It could be defined quite easily.

It is probably reasonable to spend time thinking about the other legal entities. It might also be a useful policy outcome to have them named, although probably not in the bill, because you would tie yourself up in knots a little bit there. It is important for the committee to note that there needs to be more scrutiny of the point at stage 1, because there could be loopholes and unintended consequences of setting the definition too wide. We broadly welcome the policy intent of making sure that legal entities cannot acquire crofts collectively, but there are some exceptions when they should.

I just want to pick up on what Donna Smith said about the policy intent of the 2010 act and to get on the record that I agree with it. This could be the bill to deal with getting parity between granting owner-occupier status and the tenancy assignation process. We have a crofting bill in front of us and it looks as though there are mechanisms in it that are starting to deal with some of those issues. It could be a missed opportunity if we do not think through how we can achieve the policy intent of the 2010 act in the legislation that we have in front of us.

Jackie McCreery: For someone to take title, they have to be a legal person anyway, so I do not think that specific types would need to be listed, because community bodies could be all sorts of different organisations.

The legal witnesses that the committee heard from last week talked about somehow splitting who takes the legal title and who becomes the owner-occupier crofter. That might be a better way to do it, without having to list types of people. I do not know how that could be achieved, but, as I say, it is under discussion with the Scottish Government.

Emma Harper: I am thinking about the openness and transparency around who owns the croft and who owns the land in Scotland. Transparency International has done some work on the step-by-step process of finding out who own a piece of land. I am thinking that the intention is that it is a person, not an entity in the Cayman Islands. That is a statement, not a question.

Dr Doble: I agree, 100 per cent, that there should be as much transparency as possible—that is what the land reform part of the bill is trying to achieve, and that is essential.

We fundamentally agree with the intent behind what section 10 is trying to do; we just see some unintended consequences, particularly for house building, including where a rural housing burden would apply. I hear what everyone else is saying as well, but that is the particular issue that has been raised with us. Considering the housing emergency, which Sandra Holmes raised earlier, and the rural housing crisis that we are facing and the role that crofting could play in addressing that, it seems a shame not to address the potential problem with rural housing burdens, which can be a very effective means of keeping people in local places.

The Convener: Thank you. Our next theme is common grazings.

Rhoda Grant: We know that there are issues with common grazings where the grazing share has come adrift from the croft. The bill tries to deal with that, but does it do so properly or does it need to go further?

The other issue is the use of common grazings. We have touched on use for environmental purposes, for example, but we have not really talked about who owns the carbon rights on common grazings. I am keen to get your views on whether the bill deals with issues around common grazings or whether it needs a lot more amendments. Donna Smith is smiling, so we will start with her.

Donna Smith: It is an interesting one, is it not? We absolutely welcome the move to make sure that grazing shares are not accidentally separated, because that has just been a nonsense and has caused all sorts of issues in the past, although it has prompted a lot of discussion about whether shares should ever be separated from the croft. We have spoken a lot with our members, out and about, as well as with our working group internally, and the message that we are getting is that shares should probably not be separated from the croft.

The whole point of crofting is that you have your small inby croft and then you have a share in the grazings, which allows you to work with your animals and do all that sort of stuff. Leaving tenanted crofts aside, nowadays, more and more crofts are coming without a share—people are buying an owner-occupied croft and then discovering that there is no share with it. They are then stuck with just the inby land, and that immediately limits what they can do with livestock and everything else.

We also have the growing market of speculation on carbon credits. Who knows where that is going to go? I do not think that we have any definitive answers on that yet, or on how it will impact on common grazings and all the rest of it.

Traditionally, in crofting, you needed the grazing share to make the croft viable. The bill's provisions as they stand will mean that people cannot accidentally separate the share, but they will still be given the option of choosing to separate the share, and we do not think that they should be allowed to do that. We think that the share should stay with the croft and that we should retain that.

Otherwise, as speculation about environmental things and credits takes off, we will see people who are not actively crofting choose to hold on to a share. We need to prevent that from happening and ensure that crofters have those shares available to them in order to make their crofts viable and able to function if that is what they want.

The Convener: How can that happen at the moment? To have a share in a common grazing, do you not have to be a deemed crofter? There are rules around that, so how can that happen under the current legislation? Without looking at how this legislation might stop inadvertent splitting, there is obviously deliberate splitting. Why do the rules around deemed crofting or being a deemed crofter not stop that?

Donna Smith: Because a deemed croft is just a legal term for a share that is sitting on its own; it is not really about the crofting.

Alasdair Allan: It is a bit of a misnomer.

Donna Smith: Yes. There was a Scottish Land Court judgment that considered that when it became apparent what was happening.

Let us say that I am a tenant crofter and I exercise my right to buy. It is not possible to own the share at the point when the share becomes separated—the share stays in the tenancy and becomes a deemed croft. It is not a croft, however; it is a grazing share. When I am still sitting with both, that is fine, because I can carry on acting as I would normally. However, if I chose to sell my croft on and the share was forgotten about, I would still be the tenant of the share although the croft would be with somebody else. I might still be living in the area—I would be a resident—but you could argue that I was not using the share, and that brings in a whole other issue about whether people should be able to retain shares if they are not using them.

Legally, I could have the share and not have the croft—the share would have to be assigned through the assignation process for tenancies. The share would be legally operating as a separate thing, and that is where we have the issue.

The Convener: I will come back to that. I have lots more questions, but I am aware that other members wish to ask questions.

Rhoda Grant: Is there an issue with diversification and the fact that people are growing vegetables or whatever in that they are moving away from having animals and are not using their common grazing share?

Donna Smith: Yes is the short answer. We need to consider grazing shares in the round. Land use is changing, so we need to be clear about the intention and the policy with grazing shares. I think that they are for active crofters; we do not think that someone should be able to sit on a share if they are not actively crofting in some way. That is possible at the moment.

The Crofting Commission could consider duties action against somebody who is not actively using a share. Are they resident—are they there? We are aware of people holding shares who are not resident. The shares were accumulated because of the problem with owner-occupied and deemed crofts. I am aware that somebody on Jura, I think, is holding about six shares while there are other crofts in the township that do not have a share although the people there are actively crofting and would like those shares. At the minute, they cannot get hold of them because that person is sitting on them, and it will be a long, complicated process for the commission to prise those shares out. Effectively, they are sitting as one deemed croft—there is no land; it is just the shares. There is a big problem brewing here, which we need to get a grip of. We need to be clear about what the intention is and what shares should be for, who should keep them and how, legally, they work.

When the lawyers were in, they had a big discussion about what the legal status of a share is. I will leave that to them, but we need to sort the matter out.

The Convener: Just for clarity, are there no duties related to deemed crofts? If there are, surely the legislation is already there to deal with potentially absent, or not active, deemed crofters in relation to their grazing share. Are there no such duties?

Donna Smith: The only one that is easy to enforce may be that of residency, but I do not know. I do not think that the commission has ever considered taking such action against somebody in relation to a share.

Jackie McCreery: You are right on this whole issue. Common grazings are two thirds of croft land, and half of them do not have committees or are unregulated. That will be a big issue.

The term “deemed croft” is unfortunate. Crispin Agnew did not get many things wrong, but he coined that phrase, and it has not been very helpful. They are not tenancies—Donna Smith has described that really well.

Our view is the same: the shares should not get detached from crofts. We would agree that there should not even be the option to detach them—or, if there is, they should be immediately assigned to an active crofter.

With the prospect of carbon sequestration projects and common grazings delivering many more benefits in the public interest, some of our members have come across the problem of not

knowing who owns or holds all the shares in a common grazing, so it is almost impossible to get people together to develop. We now have the potential for joint ventures, which we think is a really good thing, but that involves knowing who has the shares—and therefore transparency. If the shares are attached to a croft, that makes the process easier.

There is probably nothing that we can do about the shares that have already become separated. Maybe, at the point at which they are to be transferred by someone, they need to be reattached to an active croft. It is a massive issue.

The Convener: You say that nothing can be done, but if there is legislation that forces those shares back together—

10:30

Jackie McCreery: It comes down to the public interest. I have a difficulty with Government legislation that forces people to give up their property rights—that does not sit easily with me. However, if it is in the public interest, if it can be justified and if there is adequate compensation, I guess that that could be done in legislation.

The bill is definitely going in the right direction. There is a sub-group of crofting lawyers—which is a very interesting room to sit in—and we are talking about this issue. I am confident that the bill team in the Scottish Government will come up with something to amend the bill that will hopefully work.

Anne Murray: We are similarly disappointed that the bill will not firmly end the creation of deemed crofts and that it will not promote the reattachment of shares to the original parent croft. That was viewed as a priority by the comhairle following feedback from local crofters, and it is one of the key areas that we hope could be looked at in more detail.

People have spoken about some of the practical implications of deemed crofts. There are crofters active in an area who cannot acquire shares or utilise local common grazings, and there are grazings committees that are not able to function. There is a situation in which grazing shares are being held by people who are not crofting or resident in the area, and there is also a potential risk of speculation, particularly due to the increased potential that common grazing land has for energy development and so on. That is the key issue that we would like to highlight at this stage.

Rhianna Montgomery: I agree with everything that has been said, particularly by Donna Smith and Jackie McCreery. We do not support separating the shares from the parent croft. It is important that those shares stay tied to the croft wherever possible and that they are integral to active crofting.

I do not know enough about carbon rights to comment on that. We do not know enough in general about those rights and carbon credits, but it is important that we look at the matter further. For example, a lot of crofters say, “My landlord wants to do a carbon credit activity on our common grazing and we do not really know where we stand.” It would be useful to clarify that as much as possible.

Dr Doble: I will speak just about section 15, on unattached grazing shares, rather than about section 18, which is on the use of common grazings for forestry or environmental purposes, because I do not want to go on for too long.

This discussion has been really helpful. I will not try to add to any of it, and I thank Donna Smith for explaining the complexity. I just want to make some high-level policy points about the unattached grazing shares. Our view is that grazing shares should always reside with a croft. That is a matter of principle. Research by the Crofting Commission and the University of the Highlands and Islands shows that common grazings are the economic and cultural heart of crofting, and that needs to be recognised.

I agree with what Anne Murray said about finding a way to end deemed crofting and reattach grazing shares whenever possible. There is a risk of further fragmentation if we do not do that, which would have a negative impact on crofting townships and common grazings. The common grazings and their relationship to the township are the bedrock of crofting—they are where co-operation and the structures and development of community happen. We need to be careful with unattached grazing shares, particularly when we discuss section 18 and the potential for speculation.

There also needs to be a point made on the record about the fact that grazing shares should not be seen as having profit-generating potential. They are an integral part of the crofting system; they are not an asset to be traded or speculated on. They are the foundation of making a township viable. Sandra Holmes has examples of how grazing shares can be used for the common good and the collective public benefit in relation to developing housing and things like that.

The environmental and natural capital interventions that could and should be happening on common grazings will be more effective when they are done collaboratively across the whole with grazings committees, rather than being done in an individualistic patchwork.

There are many strong policy reasons why unattached grazing shares should be reattached.

We should end that system, for environmental, community and agricultural reasons.

The Convener: We had Andrew Thin in on 24 September, and he suggested that it was not logical not to allow shares in common grazings to be split, because

"The common land has productive uses that may not necessarily be only about grazing; it could be used for the benefit of the country."

He went on to suggest that,

"in some circumstances, the best way to drive the productive use of common grazings land could be though shareholders being allowed to acquire shares that are disconnected from crofting land."—[*Official Report*, *Rural Affairs and Islands Committee*, 24 September 2025; c 26.]

That sounds to me like speculation.

We heard examples of common grazings groups setting up hydro schemes or whatever and being a bit tetchy about the fact that some people who were non-resident and lived on the other side of the world were benefiting from the work that the group had done to attract funding to manage a hydro asset. Some of that money was actually leaving the community altogether.

I will come back to Josh Doble and then go to Donna Smith, or to Jackie McCreery; I can bring in everybody. It sounds as if we are all very much in agreement, but it seems like a contentious issue. With carbon credits—as someone touched on—there is a potential return on forestry and renewables in the future. That could be a real tipping point with regard to the whole idea of crofting and the sustainability of individual inby land without the common grazing.

I will bring in Jackie McCreery.

Jackie McCreery: I think that Andrew Thin sometimes chucks in grenades just to see what will happen, and that was maybe one of them. It comes down to the bigger picture of what crofting is about. It is not necessarily for me to say, but my understanding is that it is about communal endeavour and shared benefit. Yes, common grazings are going to evolve in how they are used, but the principle, if that is the policy, is that the benefit and the endeavour are shared among the people who have an interest in the land.

The joint venture proposals in the bill are potentially really positive, because, from a landowner point of view, we would—as Josh Doble said—like to see the landowner and the crofting community in the area, with shares in the common grazings, working together towards the wider public interest. However, while we can deliver things in the wider public interest, the shared benefits should stay with the people who have an interest in the land, which would be the crofters and the landowner.

I can see conflict arising between the non-crofting community and the crofting community if the former can see benefit. However, where there is benefit, there is generally risk. We need clarification on the carbon credits issue; all sorts of agreements are currently coming to pass. Benefit follows risk as well, so there are bigger issues there. Nevertheless, to me, the idea of speculation in croft shares, with someone buying up a lot of shares to develop the project—they will probably need landowner input anyway—would spell disaster for a lot of these areas. Again, however, it comes down to what your vision of crofting is.

Dr Doble: I would take issue with the sentence from Andrew Thin that the convener quoted, and I agree with what Jackie McCreery said. Andrew is conflating land use change with the unattached grazings system. In fact, this is about saying—as Jackie said—that we have a communal system that can deliver common benefit in a very collaborative way. We need to make sure that the system works with the changing land-use pressures that we have and with some of the things that need to happen, but that does not mean that we should insert speculation and disconnection between the township and the common grazings, and, further, potentially increase the marketisation of crofting, which I think that a number of us are very much against.

The argument that Andrew Thin makes is a bit of a blind alley. We have a really resilient system that we need to strengthen, and we need to think about how we can make that system deliver the land-use changes that we need rather than break up that system and think that inserting individualistic profit-generating mechanisms will somehow deliver the land-use change that we need. Common grazings have huge potential to deliver big, landscape-scale change and communal benefit, so we need to find ways of making that work rather than ways to tear it down.

Donna Smith: Jackie McCreery and Josh Doble have summed that up well. I think that Andrew Thin is barking up the wrong tree with that statement, and I do not think that a lot of folk would go with him on it. It is about encouraging what we can already make good use of.

There is a will to pursue environmental projects and things like that on common grazings, but there are other barriers that prevent those from happening, which are largely to do with finance and risk. We could address those barriers and make it easier for the people who are already there to do that alongside their other crofting activities. We have agricultural support legislation going through, and mechanisms could be put in that to make the process easier. I know that that is for another day, but how common grazings are used and supported through the new agricultural

policy is not being talked about enough, even though they are crucial to this side of the picture, too.

It is great that a provision on the environmental use of common grazings is being added, but we need to ensure that we have the right support mechanisms to enable people to do that. At the moment, there is a will but such environmental use is not happening for other reasons. Fundamentally, crofting law or regulation was put in place for a few reasons: to keep people in the place, to keep them active on the land and to have fair rents and all that sort of stuff. If we start to tinker with that and split up the system, that is a disaster waiting to happen.

The Convener: A couple of times, you have said that a certain aspect is maybe not for the bill, but it sounds as though it has a lot of potential unintended consequences. You talked about someone needing to offload 100 grand of profit and how they could do that. If I was a tax adviser managing someone's affairs and I was looking at this session, I would be thinking, "Okay, we've got this bill coming in and it's not going to make changes, but they will probably do that in the next five years, so I'll send a leaflet to all the crofters and say, 'I will buy your grazing shares,' because that's investable, or the risk is worth taking." We then might be here in five years' time, saying, "Do you know what? The horse has bolted, because we have a whole lot of absentee owners of grazing shares that we're just not going to get back without fighting through the courts."

You say that the bill is not the place to deal with the issue, but does it need to go further? I was going to ask this next question at the very end of the session. Does the bill need to go further to address some of the loopholes and put safeguards in place now, rather than highlighting those loopholes and allowing them to be exploited over the next four or five years until a new crofting bill is introduced?

Donna Smith: You could probably easily prevent any more deemed crofts from being created. The wording in the bill is:

"Except in so far as the conveyance expressly provides".

You could take that out, and then you would just have:

"the acquisition of the croft land includes, as a pertinent",

the grazing rights. That would immediately prevent more deemed crofts from being created. There probably is stuff that could be done on that.

The Convener: Do you want to come back in, Josh?

Dr Doble: Yes. I was going to talk about section 18 and environmental use, but I will make a brief comment about that point. I do not know whether Jackie McCreery wants to come in as well.

When we have proposed legislation in front of us, we should not talk too much about things for the next bill, because Lord knows when the next bill will come. If we know that there are issues or unintended consequences and it is within the scope of the bill and would make legislative sense to deal with those, we should, absolutely, deal with them now. When we come to theme 6 in the committee papers, it would be good to talk through some of those. There are probably proposals that are not within the scope of the bill or that would not be appropriate for now, but there are other points that we have raised so far that absolutely should be dealt with by the bill.

The Convener: I will bring in Jackie McCreery to comment briefly on what has just been said, and I will then bring in Emma Roddick on a question that pertains to this part of the bill.

Jackie McCreery: The bill could deal with existing deemed crofts and prevent their being bought up by speculators—that would be within the scope of the bill. However, the issue is whether there has been sufficient public consultation and whether the justification and evidence base for doing that has been built. That is a question for the Scottish Government and the cabinet secretary to decide. If there was not huge opposition to it, or if most stakeholders were in agreement, it could happen, but the issue is whether that background work has been done in sufficient detail.

10:45

Emma Roddick (Highlands and Islands) (SNP): On environmental use and potential profits—for example, on carbon credits—in the absence of immediate clarity on who the owner is and who will benefit from any income related to such a use of common grazings, could any practical safeguard be introduced in the shorter term? Might enforcement by the Crofting Commission ensure that the financial benefit is retained by, or at least shared with, the crofter shareholder community?

The Convener: Donna Smith, you touched on safeguards.

Donna Smith: We need to bottom out what happens with carbon credits. Who owns them? Is it the landowner or the crofter? Grazings committees are probably not structured to hold carbon credits. There is a whole mess in there and we need the Government to step in with clear guidance and a framework, because crofters might want to do stuff but the landowner can currently veto some of those projects. If you were a landlord, you might say, "I will sit on it for a while

and see what happens." We need clear guidance on what the intention is and how that aspect will work.

That aside, let us say that you had an equal share, or however you might work it. For crofters, that is still a massive risk. We need to understand that, if crofters are taking on the burden of the work and putting in capital—there are grant funds, but they do not cover everything—that is a massive financial risk and potentially ties other grazing shareholders into something for 100 years, although you have no idea what that will be. The other shareholders will not come along with you.

There are loads of complications. I do not have any answers or suggestions for you on this tricky area, but we need to bottom it out and come up with a sensible way forward.

Jackie McCreery: There could be cases in which a landlord might have reasons not to want something to happen. We have other examples whereby our members say to us that they want to do something on the common grazings that would involve sharing the benefit with the shareholders but they have difficulty in getting everyone to agree. People have different views on such projects. Some people are still very nervous about them and do not want to get involved. There is a big issue about how projects are to be facilitated if they involve the delivery of a wider benefit but some people do not have the same point of view or we cannot get in touch with them because we do not know who they are. That is an issue.

Dr Doble: I will pick up a point from the previous discussion about unattached grazing shares and a lack of transparency in or understanding of who has rights to the common grazings. If we start to deal with some of those issues and make that clearer, it will make some of the processes of land use change regarding common grazings more straightforward.

A vast amount of the peatland that needs to be restored comes under the crofting system. That is a huge opportunity. Our members—community landowners—have worked with crofting communities to restore peatland. There might be some nervousness around monetising that and turning it into carbon credits, but we—the public and the Government—should be interested in whether peatland restoration is happening, not whether it is being monetised. If it is being monetised, how those benefits are shared is really important; however, the key thing from a public interest point of view is that the peatland restoration is happening. There are grant mechanisms for that. Funding is coming through big transmission upgrade funds, for example. The really important thing is to make sure that those projects can happen on the ground.

There is a huge lack of clarity about carbon rights on crofting land. Work needs to be done by academics, and it is being done. There is a need for a steer from Government, and the Crofting Commission probably has a role to play in that.

A lot of work is also happening on the ground. It would be good for the committee to be sighted on that. NatureScot is running a number of facility for investment-ready nature in Scotland—FIRNS—projects, and there is the Arnol project in Barvas. The Flow Country Partnership is doing work, and the peatland action programme has lots of examples of how things are working on common grazings.

The issue that has not been bottomed out is the split of aspects such as benefits, risks, responsibilities and insurance. We need some working models. We have a natural capital community partnership team that is looking at examples of how the measure could work, and we know that other people are looking at the issue, so it would be good for the committee to recognise that it is an active point of discussion and that we need to get some working models on the ground.

If a common grazing is deemed to be abandoned, we should be quite nervous about any attempt by crofting landlords to step in, do the work and then claim the benefits. That would be a dangerous watering down of a lot of the rights that we have been talking about. Common grazings operate on a system of mutual co-operation and shared work. That is the approach that we need to take with any peatland restoration or tree planting that needs to happen. We just need some models on the ground that actually work. Some things are coming, but we probably need the Government to have a role in encouraging that to happen at a quicker pace.

James MacKessack-Leitch: We have a similar issue from the tenant farming side with environmental and carbon projects on agricultural holdings. Clarity over what we mean by carbon rights would be helpful not just for the crofting situation but in other circumstances and forms of tenure across the country.

How carbon credits are created is also something to think about. They are not a natural product—people do not grow them out of the ground. There is a verification process to go through. As part of the process, we need to consider what is built around that. How can we tweak that to ensure that other things are taken into consideration, such as the tenure system that is being used to generate those credits, as well as making sure that aspects such as risks, benefits and opportunities are more fairly shared. There is also that bigger question. I point to some work that Professor Jill Robbie from the University of Glasgow has done for the commission in previous

years to look at different ways of generating carbon credits or administering carbon that are perhaps more holistic and share the benefits, opportunities and risks more widely across different players in Scotland's land use.

The Convener: Emma Roddick has a supplementary question, but I will bring in Jackie McCreery first.

Jackie McCreery: I will go back to Josh Doble's point. Abandoned grazings are an issue. If a party wants to undertake a project that will deliver wider public benefit, we need to find a way for them to do that. If the public interest is that the benefit should not follow the risk and the grazing should go back to the landowner, we need to have a structure in place. If the grazing is abandoned, there are no active crofters there. Landowners in crofting areas completely understand the principle of sharing benefit and risk—that is accepted. However, we need to have in place a structure so that the projects happen; we do not want them to fail to take place because there is no structure to enable them to happen.

Emma Roddick: Donna Smith described the landowner's right to refuse consent as too broad and ambiguous. A couple of times, you said that the carbon credits issue needs to be bottomed out. Based on your experience, are landowners already using the uncertainty around carbon rights as a barrier, in order to prevent grazing committees from initiating environmental projects? If so, what is that looking like and how does it impact the community's ability to attract financing for schemes?

Donna Smith: I do not know whether I have any examples of where that is already happening. There are examples of landlords refusing permission for crofters to use the land as woodland, so I guess that it is about the principle. That was probably prior to all the speculation about carbon credits. Some of that is maybe about whether you could work together on that. All the applications go through the commission, and the landlord must have sensible reasons for saying no. There is a role for the commission in viewing those and stepping in.

Based on the fact that there have been issues in the past, you can see the uncertainty about how it all works and hangs together. Do not get me wrong—I am not labelling all crofting landlords as being the same. I know some very good crofting landlords who, as Jackie McCreery says, want to work with their community and make it happen. That said, we still need to understand fully how that happens so that everyone can get the best benefit out of it and achieve the most that they can.

However, I am also aware of landlords who have absolutely no interest in crofting, who sometimes do not even know that they have bought a crofting estate or understand what that means, and you can imagine those people saying, "Oh, I'm not doing that, because I've bought this land and I want to benefit from it." The proposal is about safeguarding against such people rather than just labelling it as an issue.

I do not know whether that helps. It is a tricky issue.

Dr Doble: I agree with Donna Smith's points about the landowner's right of refusal of consent. The interpretation is a bit too wide, and I think that Donna has covered that well. I also agree that not all crofting landlords understand the system in the same way, and not all of them are present in the same way—there are absentee crofting landlords who do not understand the system.

In terms of impacts on local communities, the most dramatic one relates to carbon markets and the changes over the past five years regarding how a crofting estate is valued if the owner says that there is a speculative value, particularly from peatland restoration on the common grazings. We have one prospective community landowner who has come up against a challenge as the valuation of the land is now vastly higher than it was, owing to what I would see as an unrealistic value being ascribed to the peatlands on the estate.

That touches on a wider point relating to legislation, the discourse around carbon markets and the need to be realistic about the opportunities, risks and financial rewards in that regard. Those are land use changes that need to happen, but let us not overegg the pudding when it comes to how much we think that people can make from that, because the issue has a tangible impact on the resilience and viability of local communities.

On the point that Donna was making about safeguards, I note that section 50ZA(3) provides no role for the commission when a landowner grants unconditional consent. That seems slightly odd—it does not align with other situations, in which the commission is responsible for determining applications, so we are not entirely sure why it is in there. The solution could just be a case of changing "must" to "may" in line 21 on page 22 of the bill, so that it is not quite so deterministic and allows scope for that to happen. That is an open question—we do not understand why that is the case, so we would welcome scrutiny of that as well as, possibly, the change that I mentioned.

The Convener: Ariane Burgess will ask our final questions.

Ariane Burgess: My questions are about part 2, which concerns the merger of the Scottish Land Court and the Lands Tribunal for Scotland. I see from the papers that most people are content with the idea from the point of view of streamlining and efficiencies. I am happy for people to come in and say more about that if they want to.

However, I have a particular interest in the potential, which is mentioned by Josh Doble in his submission, to extend

"the jurisdiction of Scottish Land Court to cover environmental rights, including litigation concerning contraventions of environmental laws, statutory and common law"

and

"nuisance and planning matters."

Dr Doble, could you expand on the opportunity to establish an environmental court in Scotland?

Dr Doble: We definitely support the principles of the merger and the proposals that we know will be introduced at stage 2 to facilitate access to justice for less affluent parties. That is the view of Community Land Scotland and of the stakeholders that have asked us to make representations on the issue, including the Environmental Rights Centre for Scotland and Scottish Environment LINK.

On page 44 of the policy memorandum, there is explicit mention of the fact that the Land Court could take on new functions in relation to the Aarhus convention. As you said, we think that there is an opportunity in the merger to allow the Land Court to have jurisdiction over environmental rights. That follows up on a long-standing call from environmental organisations to have a dedicated environmental court or tribunal. Having such a body would increase access to justice, address fragmented routes to remedy and develop judicial expertise. Essentially, it could be a one-stop shop for land and environment cases; it could also improve administrative efficiency in the judicial system.

People could then bring land cases and environmental cases—often, the two are intertwined. As such, the proposal makes good sense, and builds on long-standing commitments under the Aarhus convention. To our mind, it would be a missed opportunity if that were not at least recognised at stage 1, included in the report and then considered further at stage 2. I know that a number of possible amendments on how the proposal could work might come in from the Environmental Rights Centre for Scotland, and it is important that it is flagged at stage 1.

11:00

Jackie McCreery: The Scottish Land Court has developed a huge amount of expertise in the areas that it considers over the years. We have not commented on the merger and on the possibility that its functions could be broadened. The committee would need to take evidence from the Scottish Land Court on that.

However, there is the issue of there being adequate resourcing to enable it to cope with the workload. One of the reasons for streamlining would be to help with that, so that aspect would need to be dealt with to ensure that there was enough resource. I suspect that a lot more consultation would need to be done, but secondary powers could be used to look at that.

The Convener: I have a final wrap-up question. As I touched on earlier, the aims of the bill are quite clear. The policy memorandum sets out that it is about strengthening crofting through seven key aspects. However, multiple stakeholders have suggested that the bill is not sufficient to cover what is needed. Some have stated that, although it has taken eight years, it does nothing to address what is already a complex web of legislation and that all that it does is make minor tweaks.

Throughout this evidence session, we have focused on what is not in the bill rather than on what is in it, and on potential loopholes and unintended consequences. What are your views? Does the bill need to be significantly amended, or do we leave it generally as it is and hope that we can get another crofting bill in the next parliamentary session?

Jackie McCreery: We have this bill in front of us now, and we have limited parliamentary time. From our perspective, no matter your policy views on crofting, the bill process has been really good.

The process started with a list from the Law Society of Scotland of things that could be fixed, which is a good place to start with legislation. The bill does not have a strong political or policy slant to it; it is about fixing things that practitioners thought needed to be fixed.

We have spent two years having monthly stakeholder meetings, and the officials have been really impressive in their openness and their willingness to discuss things and say, "Okay, we got that wrong, so we'll change it." It has been a really good process that other teams could perhaps look at.

We have the bill, and peace has broken out. We are all in agreement with one another on pretty much everything, so let us get this one through.

I think that the bill does a bit more than tinkering. There are things in it that are useful and that will help. Although we do not like everything in it, there is a lot of consensus, so I think that we should get the bill through.

Those of us around the table have said quite often today, "Well, it depends what your bigger view of crofting is or what the bigger policy is." That still needs to be answered. The bill is trying to be all things to all people, but some difficult decisions might need to be made down the line, and that will take leadership. We will need that leadership from the top down in relation to another bill, whereas this one has evolved through a lot of co-working and in a very good way. The next one might be a bit more controversial, but it will need to be done.

Donna Smith: I whole-heartedly agree with Jackie McCreery. We are seeing in the discussions a reflection of the fact that the bill was initially kicked off eight years ago to address known issues at the time, for which it was meant to be a quick fix. However, for a variety of reasons, it has taken us until now to get here, and the discussions reflect the fact that the world has moved on. The things that keep coming out through all the chats are because of that, rather than because there is anything fundamentally wrong with what is in the bill.

Although there is now more desire to take a more fundamental look at crofting, we are nonetheless supportive of this bill progressing, albeit with some minor tweaks or whatever else. In principle, it is there to do a job, and we should continue to do that job.

If it is at all possible, it would be good to get a commitment, perhaps even in the bill, to review where crofting is and what the policy ambition for crofting is. Some fundamental things have changed over time. An escalating market in crofts is driving a lot of the activity, which is a problem, and we need to look at how we address it.

There are all sorts of other things. The right to buy has caused a lot of issues, so is it a good thing or not? There is also the creation of new crofts on public land. We could look at a lot of big-ticket items, because the world has changed. Most of us—perhaps all of us—want to see the bill progress, but we need a real, immediate commitment on what is next and where we should go. We should start with the policy and take it from there.

Rhianna Montgomery: I completely agree with everything that Jackie McCreery and Donna Smith have said. I also want to highlight the engagement with the bill team and the crofting bill group. That has been really positive, and going through all the legislative changes before the bill was introduced was really useful.

The bill introduces a lot of technical clarifications in legislation, as we have discussed. It might not make as many material changes for crofters as we would want to see, but, as Donna Smith touched on and as we have discussed today, a lot of things can be amended that would start to make those material changes.

Dr Doble: I agree with a lot of what has been said. The principle of the bill can definitely be supported.

From our perspective, some amendments at stage 2 could do more than introduce technical tweaks; they could add some real changes. We want more evidence to be required to satisfy residency duties. We want to extend the Crofting Commission's scrutiny to the award of owner-occupier status in order to align it with the assignation of tenancies. We want to explore things such as granting rights to exclusive benefits from any crofter-led environmental initiatives on common grazings. We also think that procedures for breaches of duties could be more speedy and stringent.

It is also important to get on record that there is broad consensus around the bill. I echo what Jackie McCreery said about the process, which has been commendable. It is not often that we get that much agreement among this group of stakeholders, so that is to be celebrated. However, what I would call structural reform of crofting will be needed in the next session of Parliament—we want to get that on the record, too, and get whatever commitments to structural reform we can from the Government. That picks up on the things that Donna Smith mentioned, such as how we address the escalating market in croft tenancies, limit the number of crofts that one individual can potentially occupy and do something to restrict the individual right to buy. We want to push back on the marketisation of crofting. We definitely welcome the creation of new crofts and, although we should not put the cart before the horse, we could definitely explore the expansion of the crofting model in Scotland.

We have a really resilient and potentially democratic and collaborative model in crofting that could do a lot to change land use, get more people to live and work on the land, address rural depopulation and achieve a lot of the policy outcomes that the Government wants and that certainly a lot of us want, too. If there is a bit more than just tweaking of the bill, we should definitely support it, but we need to look at how we build a really resilient crofting model for the 21st century by progressing a much more structural piece of reform in the future.

Sandra Holmes: Our response to the bill was really short because we pretty much endorse everything that is in it. I also wish to pass on our thanks to the bill team, who have been exceptionally open and inclusive, which is largely why we have reached such a positive outcome.

Interestingly, some of the more policy-driven elements of the bill were dropped. When the consultation happened, the views were more divergent, and there is more work to be done on the policy side of things. However, I feel quite strongly that getting the technical fixes done gives a really solid foundation for making the more involved policy discussions more fruitful, because we will not get hung up about things to do with deemed crofts and the really technical matters. The bill is a big and very positive step forward, but it is not the end of the journey.

Anne Murray: There are things included in the bill, such as the streamlining of processes and so on, that will benefit existing crofters, but there is a great deal of disappointment that it does not go far enough. As others have expressed, we want to see a commitment to a more fundamental change in how the system works. We also want to see actions to tackle some of the significant issues that prevent people from becoming crofters and impact on the population of our more remote communities.

The bill as it stands is fine. However, we have spoken about some of the issues that could still be looked at. We are disappointed and would like to see a commitment to more fundamental change.

James MacKessack-Leitch: I largely agree with what everyone else has said. Given the time that is left in this session of Parliament and where we are, the bill works as a technical fix that deals with some of the issues.

However, there is a need to have a longer, deeper look at crofting as a whole and build links with other areas of work. For example, legislation on small landholdings—that is, crofting outwith the crofting counties—is being updated in the Land Reform (Scotland) Bill at the moment. There are also links to planning. We have a case involving a landowner who is trying to create new crofts. That is a brilliant idea, but they are struggling with the planning authority because they are creating rural housing. Therefore, there are bigger questions and links that could be explored at a later date.

However, for now, the bill as it stands deals with some of the issues. It provides the foundation that was mentioned a minute ago, and there is space during the next parliamentary session to have bigger discussions about crofting, as there probably has been—and will be—for decades if not centuries.

The Convener: That concludes our questions and our evidence session. I would normally say that you will be pleased to hear that, but I think that everybody has quite enjoyed contributing today. I am sure that all the members of the committee have very much appreciated your input and the evidence that you have given us.

I suspend the meeting for five minutes to allow the witnesses to leave the room.

11:11

Meeting suspended.

11:16

On resuming—

Subordinate Legislation

Rural Support (Simplification and Improvement) (Data Publication) (Scotland) Regulations 2025 (SSI 2025/274)

The Convener: Welcome back. Our next item of business is consideration of a negative instrument. Do members wish to make any comments on the instrument?

Ariane Burgess: Constituents have raised a broader concern with me, which is that there is a sense that there has been a bit of tinkering around the edges of existing schemes rather than the transformational change that was promised in the vision for agriculture.

The Government has failed to deliver its initial plan of a menu of measures for tier 2 of agriculture reform, and stakeholders have raised with me that the changes are a very poor alternative. They have raised questions on the Government's ability to deliver better outcomes for nature and climate through stronger conditionality. I want to put on the record that people are raising concerns that we are not getting into the agricultural vision space.

The Convener: I do not believe that that is pertinent to the negative instrument that is before us. Further instruments may come forward, but your point does not directly relate to this instrument, which makes, in effect, a very small amendment to the way in which data is published.

As there are no other comments, I assume that everybody is content.

That concludes the public part of our proceedings.

11:18

Meeting continued in private until 11:38.

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