RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 20 January 2010

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
2nd Meeting 2010, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*Alasdair Morgan (South of Scotland) (SNP)
*Elaine Murray (Dumfries) (Lab)
*Peter Peacock (Highlands and Islands) (Lab)
*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhona Brankin (Midlothian) (Lab)
Jim Hume (South of Scotland) (LD)
Nanette Milne (North East Scotland) (Con)
Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bruce Beveridge (Scottish Government Rural Directorate)
Lyndsey Cairns (Scottish Government Rural Directorate)
Roseanna Cunningham (Minister for Environment)
Iain Dewar (Scottish Government Rural Directorate)
Professor James Hunter (UHI Millennium Institute Centre for History)
Iain Matheson (Scottish Government Rural Directorate)
Alexander McNeil (Scottish Government Legal Directorate)
Ian Strachan (Scottish Government Rural Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

SENIOR ASSISTANT CLERK

Roz Wheeler

ASSISTANT CLERK

Lori Gray

LOCATION

Committee Room 4

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 20 January 2010

[THE CONVENER *opened the meeting at 10:06*]

Decision on Taking Business in Private

The Convener (Maureen Watt): Good morning, everyone. Welcome to the committee's second meeting of the year. I ask everyone to ensure that all mobile phones and BlackBerrys are switched off.

The main purpose of today's meeting is to take evidence on the Crofting Reform (Scotland) Bill. This is the committee's first evidence session on the bill, and we will hear evidence from Professor James Hunter, followed by Scottish Government officials. We also have some statutory instruments and a couple of draft codes of practice to consider.

Item 1 is consideration of whether to take in private item 10, which is consideration of a report on the legislative consent memorandum on the United Kingdom Flood and Water Management Bill. Does the committee agree to take item 10 in private?

Members *indicated agreement*.

Subordinate Legislation

Crofting (Designation of Areas) (Scotland) Order 2010 (Draft)

10:07

The Convener: Item 2 is evidence taking on an affirmative instrument, the draft Crofting (Designation of Areas) (Scotland) Order 2010. I welcome from the Scottish Government Roseanna Cunningham, Minister for Environment; Magdalene Boyd, solicitor, rural affairs division; Phil Burns, policy officer, crofting branch, rural directorate; and Iain Matheson, head of crofting branch, rural directorate.

The Subordinate Legislation Committee has made no comments on the order. Members may ask questions about the content of the order before we move to the formal debate under item 3. Officials can contribute under item 2, but they may not participate in the formal debate.

I invite the minister to make a brief opening statement.

The Minister for Environment (Roseanna Cunningham): Good morning, everybody. I am happy to be here to discuss the draft order, which will extend the benefits of crofting tenure beyond the seven crofting counties to the whole of the Highlands and Islands Enterprise area. The order proposes to designate the part of the local government area of Highland that is currently outwith the crofting counties; the local government area of Moray; and Arran, Bute and Great and Little Cumbrae.

I will speak briefly about the background to the order and what it will mean in practice. Section 3A of the Crofters (Scotland) Act 1993, as amended in 2007, provides the means for the Scottish ministers to designate areas where new crofts can be created.

The proposal to designate new areas was opened out for full public consultation between December 2007 and March 2008. Approximately 65 per cent of respondents agreed that new areas for crofting should be created to align crofting areas with the boundaries of Highlands and Islands Enterprise. Most of the interest expressed to me and to officials has come from Arran, as it happens; the correspondents feel that crofting tenure will bring them more security than their present tenancy arrangements. While that will perhaps not always be true, how people feel is extremely important to them. A number of private citizens in both geographical areas that are to be designated participated in the consultation, and all were in favour. Since the consultation ended, about a third of those who are estimated to have

small landholding tenancies on Arran have contacted the Government seeking information on progress towards their becoming crofters.

North Ayrshire Council is also considering ways in which crofting might deliver its rural development outcomes and ensure thriving rural communities. The Scottish Government's response was published on 6 October 2008, and noted the expected move to designate new areas. The order takes that step to its conclusion.

If the Scottish Parliament approves the order, under the small landholders acts of 1886 to 1931, landowners and tenants will be able to apply for new crofts to be created in the designated areas. Under the acts, tenants in designated areas may, without the need for a landlord's consent, apply to the Crofters Commission to have their holding converted to a croft.

The Crofters Commission may allow conversion to crofting tenure only after the tenant receives certification of their holding from the Scottish Land Court and pays any due compensation to the landlord. After the conversion, the tenant has access to the full benefits of crofting, including the statutory right to buy their croft. The Scottish Government has already received European Union approval for assistance from the crofting counties agricultural grants scheme to be available to crofters in the designated areas. We also intend to open the croft house grant scheme to crofters in the designated areas and will be preparing the necessary secondary legislation to that end over the coming months.

I am happy to answer any questions that the committee has on the order. If I cannot answer a question, I hope that one of the officials will be able to do so.

John Scott (Ayr) (Con): Good morning, minister. As ever, I declare an interest as a farmer. I seek clarification on a number of points. First, how many holdings that are currently let under the small landholders acts will be affected by the order?

Roseanna Cunningham: I take it that you are asking how many landholdings there are. The only landholders who will be affected by the order are those who choose to apply to convert their landholding to a croft.

John Scott: But you must have some idea of how many that is.

Roseanna Cunningham: In absolute numbers?

John Scott: Or even ballpark numbers.

Roseanna Cunningham: Do we have a rough figure?

Iain Matheson (Scottish Government Rural Directorate): About 20 or 30.

Roseanna Cunningham: At the moment, about 20 or 30 have written to us, but we anticipate that the number will increase once the order is approved.

John Scott: In whose ownership is the land, by and large? Is it Arran ownership or Government ownership?

Roseanna Cunningham: Most of the land is in private ownership—it is owned by one private landlord or another. Since I do not know about the individuals who have written to us thus far, I cannot possibly say which landowners are affected by the current requests.

John Scott: Will funding for the various schemes from which crofters currently benefit be increased proportionately, or will the pot remain the same as for the existing crofting community?

Roseanna Cunningham: That is a fair point. The EU has agreed with us a 10 per cent uplift in the crofting counties agricultural grants scheme for new tenants and for those who are under 40. We made that application to the EU some time ago, and it was granted. We intend to extend the croft house grant scheme to crofters in the areas. As members may know, we are considering very carefully the croft house grant scheme, as well as the rural housing grant scheme, and we have not yet finalised our decision on what will happen.

John Scott: On a more philosophical point, do you regard the current crofting model to be working well within the existing six crofting counties?

10:15

Roseanna Cunningham: I think that the vast majority of crofters, like the vast majority of farmers, from time to time have complaints about aspects of what they do. I would not expect 100 per cent satisfaction 100 per cent of the time—and indeed we do not get that—but anyone who speaks to crofters will find that they are very content with the philosophy of crofting in general and in particular. Although there are many debates about aspects of crofting and there is rarely unanimity in any of the specific debates, it is interesting that there is broad general agreement about, if you like, the ideological or philosophical basis of crofting.

John Scott: If the crofting model is working well, why is further legislation being introduced to improve it? I do not think that crofting is working well. Would it not have been more appropriate to make the order after we had passed the Crofting Reform (Scotland) Bill, which it is hoped will make crofting work better?

Roseanna Cunningham: The order does not depend on the bill. The order was envisaged by

the previous Government and has been gladly adopted by this Government. The order does not depend on the Crofting Reform (Scotland) Bill, which is a separate piece of legislation that is beginning its way through the parliamentary process. In my view, the order stands alone and will provide a sensible option to align crofting with the Highlands and Islands Enterprise area. Given that HIE is now responsible for the development of crofting, it makes sense to do that.

Of course, there are those who would like the crofting counties to be extended even further. That debate might still be had in the future, but for the moment, in my view, the order will introduce a perfectly sensible progression that is widely supported. It does not depend one way or the other on any other piece of legislation. The order arises out of the previous crofting bill that the Parliament passed.

The Convener: If there are no further questions, we will move to the formal debate on the motion. I remind members that officials may not participate in the debate.

I invite the minister to speak to and move the motion.

Roseanna Cunningham: I move,

That the Rural Affairs and Environment Committee recommends that the draft Crofting (Designation of Areas) (Scotland) Order 2010 be approved.

John Scott: I want to raise two points of principle.

First, I am dismayed that crofting, for whatever reason, has not been regarded as working well—notwithstanding the minister's preamble earlier—since it began in the 1800s. In the early days, landlords exploited the people who became crofters. That is beyond doubt. The famines of the 1840s led to further misery. Today, it is self-evidently impossible to make a living from the average croft of 5 hectares. For entirely understandable reasons, we now have problems of absenteeism and neglect. From its beginning until now, crofting as a business model does not appear to have ever worked well and it is not currently working well, so I cannot understand why the Government has introduced an order that will expand crofting to other parts of Scotland.

Secondly, the order will extend to people in the proposed areas who are currently tenants under the small landholders legislation the absolute right to buy their properties. Along with my party, I oppose that extension. The methodology for achieving that is clearly outlined in the policy objectives that are provided in the Executive note to the instrument. Notwithstanding the current and proposed compensation payments to landlords, I object to land being taken from possibly unwilling sellers and purchased by tenants who had no expectation of being able to do so on entering their initial tenancy agreements.

In conclusion, I cannot see the logical justification for extending crofting legislation into the new areas. There will be no real benefit from doing so, because many current tenants will not wish to become crofters, as that would only increase their burden of bureaucracy. Such people would need to cope with a greater, rather than reduced, level of bureaucracy, whereas most people in rural areas seek to reduce the burden of red tape. Therefore, I am afraid that I cannot support the motion.

Peter Peacock (Highlands and Islands) (Lab): I confess that I am surprised at John Scott, who is normally a genial and accommodating colleague. I am afraid that we have seen the Tory party revert to type in protecting the landowners.

John Scott asked for justification for the order. Just two and a half years ago or so, Parliament passed a bill that made provision for what we are discussing. All that the order will do is implement that enlightened piece of legislation. That will help current individual smallholders to make a free choice about whether they want to become crofters. They will have a choice, which I would have thought the Tory party would support.

I am happy to support the order, and I am sure that the committee will recommend that it be approved. I hope that it will.

Karen Gillon (Clydesdale) (Lab): As members know, I am on a steep learning curve on crofting, but the more I learn, the more attracted to the model I become.

I welcome the order and extending the ability to croft beyond the traditional crofting counties. The minister is right: if we begin to move things forward and see crofting develop again in areas further south, there may be demand in other parts of Scotland for a model in which people can croft and do other things while they live on the land. As we discuss food security and climate change issues and issues that the Tories are keen on in their new, enlightened days, they seem less keen on giving people the right to buy the land on which they live. People can buy their council house, but God forbid that they should take a house off a landowner who perhaps never owned it in the first place many centuries ago. I am content with the principle behind the order and hope that committee members will support it.

Liam McArthur (Orkney) (LD): I share the sentiments that Karen Gillon and Peter Peacock have expressed. The fact that we are looking at a bill to address issues in the crofting counties should not suggest in any way that there is a movement to unwind crofting in those counties—indeed, quite the reverse is the case. A legitimate

attempt is being made to address problems with a view to safeguarding crofting over the longer term. John Scott's party will make proposals for amending national health service and education structures, but I hope that they will not be made, because his party believes that the NHS and our education system are fundamentally flawed and need to be unwound.

I share the astonishment of Peter Peacock and Karen Gillon at John Scott's position. The order is a fairly enlightened response to demands in areas—indeed, I recall from the consultation that the demands go beyond the areas that are covered in legislation. Karen Gillon and the minister are right: the provisions will probably incentivise others who see crofting as a way forward to deliver agriculture and extend a way of life in communities. Therefore, I support the order.

Roseanna Cunningham: The basis of John Scott's objection is not clear to me, other than its wholly ideological basis, so it is not really an objection to the specifics of the order. I reiterate the point that Peter Peacock at least made: the Parliament agreed to what is being proposed in 2007. We are carrying forward its wishes in the way that was envisaged when legislation was being considered. If the Tory position is to promote the abolition of the Crofting Reform (Scotland) Bill, I look forward to the debate on that. The proof of the pudding will be in the eating. Expressions of interest have already been made by individuals who want the order to be approved so that they can get on with converting holdings to crofts.

John Scott: For the avoidance of doubt, minister, I am more than happy to see crofting in the existing crofting counties being made to work—and being made to work well and better—through the Crofting Reform (Scotland) Bill, because all are agreed that the existing legislation is shambolic. Many of the difficulties that crofters currently face are a result of the shambolic legislation that has preceded where we are today. I want that legislation to be developed and improved on. However, until it is improved on, I can see no justification for extending a system that, essentially, does not work well.

Yes, I have an outright objection to the extension of an absolute right to buy. That is my philosophical position, but it is a perfectly valid objection to this debate.

Roseanna Cunningham: Other members of the committee have made the point that can be made about the right to buy. The fact is that people are expressing interest in converting to crofts under the existing legislative framework. Whatever changes might or might not be made as a result of any future legislation, people are interested in and attracted to crofting and intend to convert their smallholdings to crofts. That in itself is sufficient.

The Convener: The question is, that motion S3M-5505 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Morgan, Alasdair (South of Scotland) (SNP)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

AGAINST

Scott, John (Ayr) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Motion agreed to,

That the Rural Affairs and Environment Committee recommends that the draft Crofting (Designation of Areas) (Scotland) Order 2010 be approved.

The Convener: The minister will stay with us for items 4, 5 and 6, but her officials will change. I thank the present officials for their attendance and invite the officials who will attend for the next item to come to the table.

10:26

Meeting suspended.

10:27

On resuming—

Scottish Government Code of Practice for the Welfare of Dogs (SG 2009/279)

Scottish Government Code of Practice for the Welfare of Cats (SG 2009/280)

The Convener: Item 4 is on guidance that is subject to approval. The codes of practice are not Scottish statutory instruments, but in accordance with section 37 of the Animal Health and Welfare (Scotland) Act 2006 they are subject to parliamentary consideration under the affirmative procedure.

I welcome the Scottish Government officials Kirsten Simonnet-Lefevre, who is the principal legal officer in the rural affairs division; Ian Strachan, who is branch head of the animal health and welfare division; and Andrew Voas, who is a veterinary adviser in the animal health and welfare division.

The Subordinate Legislation Committee made no comments on the codes of practice. Members may ask questions about the content of the codes of practice before we move to the formal debate

on each code under items 5 and 6. Officials can contribute under item 4, but they may not participate in the formal debate.

I invite the minister to make a brief opening statement on both codes of practice.

Roseanna Cunningham: The codes have been made under section 37 of the Animal Health and Welfare (Scotland) Act 2006, which allows the Scottish ministers to make codes of practice for the purpose of providing practical guidance on animal welfare. The aim of the codes is to provide guidance to owners and keepers of cats and dogs on how to care for their animals. The codes contain information and outline good practice on the welfare of cats and dogs, and give advice on how to meet the duty of care and the welfare needs of those animals, as set out in section 24 of the 2006 act.

Welfare problems can arise not just because of deliberate cruelty but as a result of ignorance. Examples have included gross overfeeding, which can be a serious problem, particularly for dogs, as it can all too easily cause obesity and lead to heart problems. In severe cases, dogs have been so overweight that they have had difficulty walking.

10:30

Another example is the use of flea powder. Not all flea powders are the same, and flea powder that is suitable for dogs must not be used on cats, as it would be an overdose and could cause serious complications. A further example is travelling in cars. As many people know but some still do not understand, leaving dogs in cars on sunny days, even for a short time, can be fatal. Transporting unrestrained dogs in cars can have serious consequences because, in an accident, an unrestrained dog can be seriously dangerous to itself and other occupants of the car.

Many owners do not understand that treats such as chocolate, raisins and grapes are poisonous to dogs. There have been cases in which owners believed that it was better to feed their dog with a quality—that word should be in inverted commas—home-prepared diet rather than use commercial pet food. However, without a complete understanding of essential nutrients, dogs and cats can become seriously ill if people feed them wrongly.

The codes were developed with the assistance of the main animal welfare and veterinary organisations in Scotland, which were consulted at all stages during their preparation. About 500 organisations and individuals were formally consulted on the draft codes. A total of 41 organisations and individuals responded to the draft dog code and a further 32 responded to the draft cat code. The overwhelming majority of respondents welcomed the codes and considered that the information that they contained was helpful and sufficiently detailed.

The codes will provide practical advice and guidance to pet owners. They will also be a useful tool for those who are charged with investigating animal welfare or cruelty cases, as they set the expected standards for the care of all pet cats and dogs. My officials and I are happy to answer any questions that members have on the codes.

Elaine Murray (Dumfries) (Lab): It is a good idea to make guidance available for people who keep cats and dogs, because there is a lot of mythology about what it is appropriate to feed to cats and dogs and it is not necessarily backed up by fact. How will people get the guidance? How will the guidance be distributed to people who buy a new pet and to existing cat and dog owners who need the advice?

Roseanna Cunningham: Perhaps Ian Strachan could detail the communication strategy.

Ian Strachan (Scottish Government Rural Directorate): We will not prepare a huge number of hard copies of the documents. We have set aside about £10,000 for each one. As an example, I have here a copy of the finished version of the horse code, which the committee approved last year. People will get the guidance mainly through the internet. We expect them to download it. However, copies will be given to the Scottish Society for the Prevention of Cruelty to Animals—its officers will be the main way of getting it out there. We will get copies into veterinary practices, and local authority animal health and welfare officers will be given copies to distribute.

Roseanna Cunningham: I expect that most people are likely to access the codes either through the internet, if they have internet access, or through vets. That is the most likely route, as that is when they will come into contact with those who are likely to hand out the information.

Elaine Murray: My only problem with that is to do with the irresponsible cat or dog owner who does not look after their animal properly and does not go to the vet regularly to have their animal vaccinated. There is an issue about getting the message across to the people who really need to know it, rather than to the responsible owners who vaccinate their dogs every year.

Roseanna Cunningham: That will always be a challenge. I cannot sit here and say that we will be able to transmit the codes in their entirety to every existing and potential dog or cat owner. That would happen in an ideal world, but I do not think that we will achieve that. However, much of what happens to dogs and cats is inadvertent, and is due to those who perhaps love them too much and do not truly understand what is best for them. Vets

and others may already attempt, with some difficulty, to address much of that inadvertent behaviour, and the provision of the hard and fast information in the codes will allow access to good and incontrovertible information for those who wish to access it.

The vast majority of dog and cat owners will be open to that. Whether we can achieve total success with every owner is a different matter, but I remind members that the codes of practice will provide the basis for any investigation in connection with offences under the Animal Health and Welfare (Scotland) Act 2006. When offences are investigated, the expected standard of behaviour will be the one that is set down in the relevant code, which therefore will be an additional tool for enforcing good behaviour. Indeed, the codes could equally be quoted by persons who are under investigation in defence of what they do. The codes will become the standard and will become better known as the years go by.

Motions moved,

That the Rural Affairs and Environment Committee recommends that the Scottish Government Code of Practice for the Welfare of Dogs (SG 2009/279) be approved.

That the Rural Affairs and Environment Committee recommends that the Scottish Government Code of Practice for the Welfare of Cats (SG 2009/280) be approved.—[*Roseanna Cunningham.*]

Motions agreed to.

The Convener: I thank the minister and her officials for attending. I suspend the meeting for the changeover of witnesses.

10:37

Meeting suspended.

10:37

On resuming—

INSPIRE (Scotland) Regulations 2009 (SSI 2009/440)

Shetland Islands Regulated Fishery (Scotland) Order 2009 (SSI 2009/443)

Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009 (SSI 2009/444)

Action Programme for Nitrate Vulnerable Zones (Scotland) Amendment Regulations 2009 (SSI 2009/447)

The Convener: Item 7 is consideration of four negative instruments. The Subordinate Legislation Committee commented on the INSPIRE (Scotland) Regulations 2009 and the relevant extract of its report has been circulated to members as paper 8. No member has raised any concerns on any of the instruments and no motions to annul have been lodged. Do members have any comments on any of the instruments?

Liam McArthur: The Inshore Fishing (Prohibition of Fishing for Cockles) (Western Isles) (Scotland) Order 2009 seems to be a sensible measure, but paragraph 11 of the regulatory impact assessment is rather ambiguous. It starts:

"Responses to the consultation have been generally supportive of the proposed introduction of a minimum size",

but goes on to say:

"Some concerns were raised about enforcement",

a point that is also picked up in paragraph 15. It would be helpful to have set out for us what those concerns were. I do not necessarily question the approach that has been taken, which looks to be proportionate, but if there are concerns on enforcement, it would be helpful to have a bit more detail on what they were.

The Convener: We are happy to get some further information on that for a future committee meeting. Are you happy if we get a letter back?

Liam McArthur: Absolutely.

The Convener: Do we agree not to make any recommendations on the instruments?

Members *indicated agreement*.

Crofting Reform (Scotland) Bill: Stage 1

10:40

The Convener: We move to the first evidence-taking session on the Crofting Reform (Scotland) Bill. I welcome Professor James Hunter, who will make an opening statement that will draw on the key points in his written submission. We all agreed that the submission was extremely helpful, as it provided an historical overview of crofting, including an explanation of how crofting law has arrived at its present form.

Professor James Hunter (UHI Millennium Institute Centre for History): Thank you, and good morning. As you said, I went over the background in my written submission so I do not propose to go into the history of crofting yet again in great detail, or we might be here all day. However, I will emphasise one or two points.

The first point that arises with regard to the history of crofting goes right back to its beginnings. Crofting was created as a part-time agricultural enterprise and, as I explained in my written submission, as a mechanism for forcing people to undertake other forms of economic activity, which primarily involved working in the kelp industry.

To understand crofting, it is fundamental to appreciate that it is not primarily an agricultural system. It has an agricultural component, in that landholding defines it, but most crofters have never derived—and still do not derive—more than a small part of their income from agriculture and farming. One of the difficulties for policy makers—not only today, but over generations—is that they wrestle with crofting from the perspective of being primarily concerned with farming. Farming and crofting are two different things, and cannot—or should not—be mixed up.

The crofting system has experienced all sorts of vicissitudes, some of which Mr Scott mentioned earlier. Legislation first arrived on the crofting scene in the shape of the Crofters Holdings (Scotland) Act 1886, which gave crofters security of tenure; it is down to that act that crofting survives in its current form today. However, the 1886 act did not restore to crofters in any substantial way land that had been lost to them during the clearances, and so further intervention followed in the shape of what was known as land settlement, which involved the creation of new crofts on land that was acquired for that purpose by the state.

In light of the committee's earlier discussion, it is perhaps worth pointing out that by far the most comprehensive land reforms ever conducted in the British Isles were pushed forward by the Conservative and Unionist Party. It not only created thousands of new crofts on land that was acquired for that purpose in the Highlands, but destroyed—absolutely and totally—landlordism in Ireland; I could not resist putting that in.

We are still wrestling with the issue of absenteeism, as is the bill that is before us. As I pointed out in my submission, the historical origins of absenteeism are to be found in a court case of 1917, and legislators have been wrestling with the consequences of that more or less ever since. It is rather remarkable that a piece of badly drafted legislation that is now 99 years old and a court case that is 93 years old should still take up so much parliamentary time.

Absenteeism has been a persistent negative feature of crofting ever since, but it has become much more of an issue in recent times. When there was continuing depopulation and people were always leaving, it did not really matter all that much whether crofts were occupied because there was no demand for them. Now there is demand for them—very intense demand in some areas. The issue of crofts being occupied or tenanted—in inverted commas—or owned by people who do not reside on them has become a burning issue, which the bill tries to address.

10:45

Legislative efforts to cope with the situation go back to 1955, when the modern Crofters Commission was formed. The commission was put in place to deal with absenteeism and a plethora of other matters that concern the administration of crofting, through regulation and the like. I have made the point strongly, and I feel strongly, that the tools that the commission has been given to do the task that was set for it are inadequate. I do not blame the commission or the individuals who have been involved in it now or in the past for that. The approach simply has not worked. As I say in my submission, the bill tends to be much more of the same and will not work, either.

The complications of all that were made worse by the attempt to switch or shift crofting into an owner-occupying system. The origins of that lay in the decision by the Crofters Commission of the late 1960s that the Highlands and Islands should follow Ireland—of course, crofting legislation has Irish legislative origins. The commission wanted to go the whole hog towards owner-occupation, which had happened in Ireland a long time before.

As my submission says, we ended up with an awful hotch-potch. From 1976, crofters were free to choose between a continuation of tenancy or a move towards owner-occupation. However, that

was complicated by the fact that such owner-occupiers are not owner-occupiers in the same way as I am the owner-occupier of my house and garden—their land is still subject to crofting law and crofting tenure, so they are in a somewhat anomalous position, to put it mildly. That is why the bill imposes on them conditions in relation to other landowners, residency and the like that could not be imposed on other owner-occupiers.

The approach—it is now 50-plus years old—to administering crofting through the Crofters Commission and through endless legalities and regulation has demonstrably failed, is unlikely to succeed in the future and is misguided. Parliament needs to think seriously about that and to consider alternative ways of administering crofting.

I stress that crofting has a huge amount to offer. The system's huge strength, which it has delivered particularly to areas where it has been strong for many generations, is that it has enabled families to have a small piece of land and to engage in other activities, which has kept relatively substantial populations in parts of the Highlands and Islands. That would not have happened if those areas had been given over to extensive, large-scale sheep farming, hill farming and the like.

One can see the contrast simply by driving through just about any part of the Borders or south-west Scotland, where one seldom sees a new house, other than in the occasional village, and then driving through Skye, where crofting takes place and where the countryside is littered with new houses and with vibrant activity. That is the upside of crofting. Somehow, we must get the legislation and regulation right. I do not think that the bill will do that, but Parliament is right to try to do something to get the best deal out of crofting for crofters and the wider public.

The Convener: You have detailed both in your submission and just now how crofting came about and how the system has changed a bit over time. You said that crofting still has a huge role to play. Could the same outcome have been achieved by any alternative methods?

Professor Hunter: I have mentioned Ireland more than once and there is a long-standing Irish joke about beginning to give directions by saying, "I wouldn't start from here." In an ideal world, I would not start from here.

My reading of the bill and of many of the preliminaries to it is that again we have an approach, which although praiseworthy—I stress that I do not mean that anyone is trying to do anything adverse to crofting—involves taking the existing legislation and the existing administrative structure as it has developed and adding yet more stuff on to them. I just think that an approach that involves yet further attempts to regulate and to legalise things around crofting does not work. We know that it does not work—it has not worked up to now, and I have no reason to believe that it will suddenly start to work in future.

There are novel aspects to what is proposed, particularly the introduction of an elected element to the Crofters Commission, which is entirely new, but I do not think that that will make a huge amount of difference. It does not matter all that much who is sitting around the table in the commission's headquarters, because the tools—the legislation and the regulations—that it has and which it is about to be given will not enable it to deliver the best result for crofting.

Alasdair Morgan (South of Scotland) (SNP): I have a supplementary. Given that the crofting system is in place of the land ownership and land tenure legislation that applies in the rest of Scotland, if we are to have a different approach, we must have a set of rules and regulations to regulate tenure, so we must put in place some apparatus for that. Therefore, it must just be the detail of the apparatus to which you object.

Professor Hunter: My objections are not to the detail—it is not a question of one regulation being better than another—but to the entire approach. In the short supplementary paper that I sent to the committee, which I think has been circulated, I indicated that an alternative approach would be to use financial incentives. I do not mean to suggest that I have suddenly produced the answer to the crofting problem. I am simply saying that by using financial incentives rather than the heavy hand of legislation and legality, one might be able to achieve the same objectives much more efficiently and effectively. Such an approach would certainly involve far less bureaucratic and legal complexity, which I think is where the problem lies.

It seems to be difficult for the people who formulate legislation and the like to think afresh about the issue. I understand why that is, but instead of simply taking all that is there and adding a bit more to it, they need to look at crofting from the point of view of the socioeconomic benefits that it has delivered and is delivering but which it could deliver a lot better. You are right that there must be some sort of overarching mechanism and some sort of definition of what crofting is, but my point is that we need to think about how we can create a mechanism that will deliver those benefits in the current circumstances. It may seem a little odd for someone who has spent a lot of time researching the history of crofting to say so, but I sometimes think that there is far too much history in crofting and not enough future. We need to think about the way crofting is now, the way it could be and how we can put in place the machinery to deliver an approach that would be beneficial, because I genuinely do not think that the approach

that we are still pursuing will ever work—at least, it will not deliver the best possible result.

John Scott: What might make it work better? The bill will be amended, and a man of your experience will have strong views on how to do that.

Professor Hunter: In the supplementary material that I provided, I indicated a possible means of doing so, although I do not for a moment pretend that it, too, would not be without its difficulties and drawbacks. There is an alternative way of tackling absenteeism without resorting to endless legality. It is important that members understand what happens at the moment in that regard.

I tried to create a wee story in my submission. In nine cases out of 10, you become an absentee crofter in the way that I described—when your parents leave you the croft. You have grown up on the croft but have been upwardly mobile and have a professional job—or any kind of job at all—outside the area, but you think that it would be nice to go back to the croft when you retire. You then get drawn into the astonishingly complex saga of to-ing and fro-ing with the Crofters Commission. You might end up buying the croft, but you still come under the Crofters Commission when you have bought it, which you might not have realised when you set out to buy it—and so it goes on.

I just do not believe that there is not a better way of dealing with that. I tried to sketch out a potentially simpler way of delivering the same result without in any way making absenteeism unlawful or illegal but instead creating financial pressures that would make it more likely that the absentees would resolve the situation themselves. At the moment, there is no financial incentive to resolve an absentee situation, because, for the reasons stated in my submission, which go back into history, croft rents are nominal. There is no financial pressure on absentees to do anything about the situation; the croft is probably costing them only £20 a year or less.

The Convener: We will probably come back to absentee crofters as we move through different parts of the bill.

Alasdair Morgan: Legislation in this area obviously has to try to strike a balance between the rights of the crofter and the rights of the crofting community, which are not necessarily the same. Do you think that that balance has changed over the years and, if so, where does it lie now?

Professor Hunter: What has changed in particular is that it has become more difficult to strike that balance because of wider changes. In their essentials, the rights that crofters have, whether as tenants or owner-occupiers, go back to 1886, although they have been much modified since, and changes for owner-occupiers are relatively recent. In essence, Parliament in its wisdom has conveyed certain rights on crofters.

What has changed, which has made the situation much more fraught, is that those rights now have a monetary value that they previously did not have. If I had been a tenant of a croft in the 1950s or 1960s, when the present legislation took shape, and I had wished to transfer the tenancy to somebody other than my son, daughter or nephew, a bit of money might have changed hands, but it would not have been a great deal, because the tenancy of a croft at that point had very little monetary value. That is leaving aside the value that there might have been in the house—I am just thinking of the croft itself.

What happens today is very much a good thing—it is a reflection of the fact that the Highland economy is generally more buoyant than it used to be. People now want crofts, so they have acquired a monetary value. One of the real difficulties in striking the balance, and one of the reasons why there has, understandably, been disagreement among crofters about the best way forward, is that it is very hard to say to a crofter in his or her 60s or 70s who is looking to retire with a bit of a nest egg and whose croft has acquired a certain value in the market that they will not be allowed to cash in the value that their asset has acquired. The situation is not easy; it is very complicated.

Trying to strike the balance between what might be my right—or the right of any individual crofter—and what is in the wider interest of the crofting community has become much more difficult than it once was. In the past, the two things were more coterminous, so to speak, than they are now. I appreciate that striking that balance is what the legislation is struggling to do. One of the difficulties facing not just the Scottish Government but its predecessor is that crofters themselves, as we all know, have considerable difficulty in coming to a consensus, for that reason.

If we look at my rights as an individual crofter, I have the benefit of being able to cash in on the market, but if we look to the future wellbeing of crofting and crofting communities as we have understood them, we need to hem in my rights. It is extraordinarily difficult to strike the right balance.

11:00

Alasdair Morgan: In a sense, that is no different from the situation in the Borders or Galloway. You mentioned the balance between the interests of the individual who sells his house for the highest price and the interests of the community, which needs houses to be available for people to live in. We heard about that in our rural housing inquiry.

The situation is exactly the same elsewhere in Scotland.

Professor Hunter: It is the same. A lot of the stushie about crofting is just a proxy for that issue. However, it is complicated in the case of the Highlands and Islands by the existence of crofting and the fact that, for better or worse, crofting is surrounded by a heap of legislation that is supposed to deliver both public benefits and the continuing wellbeing of crofting. That is the distinction between what is happening in the crofting areas and what is happening elsewhere. However, I readily take the point that the economic drivers are more or less identical in the two localities.

I was trying to draw a contrast between crofting areas and an area such as the Borders. We should look to hang on to crofting, improve it and, indeed, extend it to other parts of the Highlands and Islands, as the order that you discussed earlier seeks to do—I would happily extend it to the rest of Scotland and beyond as well. One reason for that is that crofting creates a mechanism by which people can have a little stake in the countryside and a base from which to do other things. That has been its best feature, and that is what it has delivered over a long period of time in the areas where it has existed. However, if it is to continue to deliver those benefits to the same groups of people, something will have to be done about the situation. If the thing is just left alone, there is no doubt that it will wither on the vine and gradually—or not so gradually—disappear.

The Convener: We are a bit pressed for time, so I ask everyone to keep questions and answers as succinct as possible.

Liam McArthur: You alluded to the fact that history is littered with well-intentioned attempts to address the problems that you mentioned. You also conceded that part of the difficulty is that there is no agreed view within the crofting counties about what needs to be done to address the problems. Do you see that as a result of the distinctive origins of crofting? Does it break down geographically? In my part of the world, Orkney, the prevalence of owner-occupiers is far greater than that of crofters. In coming to a collective view about what needs to be done, what simple measures would attract support from throughout the crofting community? Do you have views on how that might be achieved?

Professor Hunter: I appreciate that crofting is not the same beast everywhere. As you well know, it is relatively marginal in Orkney. It is much more prevalent in Shetland, but it is still a very different thing there from what it is in Lewis, particularly in terms of the attitudes of the people involved. It might look much the same on the ground, but people's attitudes to crofting and to what would be a good future for it are different. There are other examples. What happens in Tiree and parts of Uist is technically crofting, but it approximates to a small-farm system. In some ways, Tiree is more like Orkney, even though it is under crofting tenure. There are many variations.

The Shucksmith committee wrestled with those issues and did a very good job. Part of its solution, with which I agree strongly, was to transfer the responsibility for crofting from a bureaucratic commission to crofters in different localities. Part of the reason for that was to enable crofting to evolve differently in different places in accordance with different pressures. Whatever is done, that is essential. Everywhere is not the same.

The Convener: Although that is true, and I think that that is the way to go, the evidence that we have taken suggests that everyone is looking after their individual bit rather than talking about the community. Such devolution would take account of the different types of crofting in different areas, but that has not come through in the evidence that the committee has taken. Why do you think that is?

Professor Hunter: A lot of my friends are crofters—at least, they are my friends until I say what I am about to say. I can readily understand that there is a lot to be said for people's interests being looked after by a remote organisation in Inverness, because that removes all hassle and responsibility. However, that does not mean that it is a good thing. If I was pushed, I would resort to an old anarchist slogan: people sometimes need to be forced to be free. In a sense, that is the politicians' job. You have to take a wider view of the issue.

Why should the overwhelming majority of crofters suddenly vote to take responsibility for what can sometimes be quite difficult decisions, which are taken at the moment by a relatively remote body that sits elsewhere? This is my own view, obviously, but it is cutting with the grain of the times to move towards more self-governance. We have seen the quite remarkable success of community ownership in exactly the same parts of Scotland, often involving exactly the same groups of people, about which we were often told that people would be incapable of running large landed and other enterprises. However, those people have proved to be remarkably capable of doing that and of delivering all sorts of benefits. Having seen what has happened in Gigha, Eigg, Knoydart and elsewhere, I refuse to accept the argument that crofters and people in similar communities are somehow incapable of running their own affairs. Through community ownership, we have seen that they are a lot better at running their own affairs than the people who were running things previously. I strongly adhere to the view that the

ultimate salvation of crofting, if it has one, will rest with crofters themselves, and they will have to accept responsibility for it.

Alasdair Morgan: You talked about the Land Settlement Act 1919 taking crofts and land away from the crofting areas. Now that the 2007 act has given powers to create new crofts, is there any scope to restore crofting to such areas?

Professor Hunter: In principle, yes. Indeed, we have seen quite a bit of that. I might be risking getting into party politics here, but I mentioned how Conservative Governments created thousands of new crofts, but the only Labour legislation on crofting prior to the Scottish Parliament taking effect was the Crofting Reform (Scotland) Act 1976, which made it impossible to create any more new crofts. Thankfully, we have moved away from that, and we are now beginning to see the possibility of creating new crofts. One serious legislative risk is that there will be pressure to treat the new crofts differently, to ensure that they do not get into the same regulatory mess as the existing crofts; for example, tenants might not be given the right to buy and so on.

I did not mention this in my submission, but one of the bill's utterly bizarre features is its proposal to give 10-year leases to people on crofts that are owner-occupied by people who live elsewhere. That should not be touched with a bargepole. What if a young chap of, say, 20 is given a 10-year lease for such a croft, gets together a bit of stock and makes a really good go of it? When he reaches 30—by which point, of course, he might also have acquired a wife and a couple of kids—he might be slung out on his ear because someone at the other end of the country is reckoned to have a better claim to that croft. That is a recipe for disaster and I strongly caution the committee not to agree to that, whatever else it does. The people who put such a system in place will—rightly, in my view—have obloquy hung around their necks once those chickens come home to roost. Such attempts to deal with the issue, which take us back almost to a pre-1886 situation, are not to be encouraged.

That said, there is clearly potential to create a lot of new crofts, not just in the Highlands and Islands, but elsewhere. The argument for crofting in current rural development policy is stronger than it has been in the past—Professor Shucksmith, in particular, is very good on that—and we really need to cash in on the benefits that it can offer. However, as I say, creating different types of crofter in different places is a recipe for disaster.

Liam McArthur: What are the benefits and potential downsides of an elected crofting commission, which you have already referred to as an innovation?

Professor Hunter: In essence, it does not make an awful lot of difference. A move to elect rather than to appoint commission members—or at least some of them—is, of course, a fairly significant change but, as I said earlier, whoever they are and however they get to sit at the table, they will still have to deal with exactly the same issues with exactly the same tools at their disposal. I do not think that an elected commission will make a huge amount of difference in that respect.

I suppose that the move could make a difference to the commission's general stance and outlook—for example, people could have different views on various matters and stand for election on that basis—but the proposal sounds far more radical than it is.

Liam McArthur: So it would not make any difference whether the commission was wholly or partially elected.

Professor Hunter: No. What would make a difference would be to do away with the Crofters Commission altogether and to vest control of crofting at a much more local level.

Liam McArthur: So you do not accept the view that there are inherent difficulties with crofters sitting in judgment on other crofters.

Professor Hunter: Of course there are inherent difficulties. That is why people do not want to do it. The fact that it is difficult, however, does not mean that it is wrong. The huge advantage of crofters in a locality coming to a view about how to tackle absenteeism and the like is that such an approach carries much more moral force than approaches taken either here or in Inverness. From that point of view, I believe that more responsibility should be vested with crofters.

Liam McArthur: Does that not open up the risk of creating what you suggested would be the undesirable consequence of crofting developing different models in different parts of the country?

11:15

Professor Hunter: It does, and you could argue that there is a kind of contradiction there. However, to return to what I said a moment ago, if people in a particular locality decide that 10-year leases are a good thing, they will carry the can for the consequences of that decision. If you people in Parliament think that 10-year leases are a good thing and make that provision, you will carry the can. There is a distinction as to why the responsibility should reside with the people on the ground.

There is a real difficulty in this, which has to do with the demand for crofts. No matter what mechanism is used to elect members to the crofting commission—if that is what happens—the

electorate will presumably consist of people who are currently crofters. An awful lot of the resentment and difficulty in crofting areas comes from young people, in particular, who are not crofters but would like to be and who still do not have a voice in the process.

Peter Peacock: I want to follow up Liam McArthur's point about the remarkable change in land ownership in parts of the Highlands and Islands. Of course, the size of the Gigha, Eigg or South Uist estates is very different from their constituency, which would be an area committee of the Crofters Commission, as Shucksmith proposed, and much more localised. Are you arguing that, where there is community ownership or the community has decided to purchase an estate or an island, those people should come out of the crofting system and be self-governing in that sense, or that that option should be available to them? Or are you arguing at a higher level about the whole of the Western Isles, Orkney or Shetland?

Professor Hunter: There is an argument that community ownership is not the same phenomenon in all localities. The first significant exercise in community ownership was the Assynt Crofters Trust, which is a crofting estate that is entirely controlled by crofters. The original, essential point of all the legislation that we are discussing was to defend crofters against, as it were, the wicked landlords of the 19th century. All crofting legislation is still essentially predicated on the notion that there is a fundamental antagonism between the landowner and the crofter. Of course, in the case of Assynt, you are now arguing that the crofters need the Crofters Commission and a plethora of legislation to protect them from themselves. You might argue that that is entirely justifiable, but it is an extraordinarily awkward rationale on which to rest a heap of legislation.

One of my criticisms of recent attempts to legislate on crofting—Shucksmith tackled this up to a point—is that it proceeds as if crofting is in one universe and community ownership is in another, and there is little connection or overlap between the two, which is demonstrably not the case. Certainly, Stòras Uibhist, the group that now owns the South Uist estate, deals with a large tract of territory with an awful lot of crofting tenants; it is getting on for the sort of size that Shucksmith talked about. One could debate indefinitely what the ideal geographic size of such a unit would be. However, my view has certainly moved towards establishing localism, which is what we are supposed to be doing in all sorts of other ways.

John Scott: You said that a 10-year lease was not a good length of tenure. What do you suggest instead? We can always argue about what a good length of tenure is for any lease.

Professor Hunter: There should not be leases at all in a crofting context. If you move away from the position that crofters should have security of tenure, you are reverting to the bad old days. My view is, I suppose, more brutal. I tried to illustrate in my supplementary evidence that there could be a financial way of dealing with the issue. If an absentee can in any way be cajoled or persuaded to make over his croft to a young chap on a permanent basis, that is a good thing. I do not think that it is a good thing at all to introduce into crofting a leasehold system, particularly for a period as short as 10 years, which, as you will know yourself, is not an adequate length of time.

By definition, such crofts will be pretty run down—more or less totally run down—so the person going into them will not get much, if anything, in the way of buildings, fences, stock or anything else. It will require a lot of hard work and cash on that person's part to make a go of the agricultural business. To say to him 10 years down the track, "Thanks very much for that, but, as the remote owner-occupier, I am now taking over", would be an appalling thing to do. There would no doubt be some mechanism to compensate the person financially for his fences, buildings and so on but, as you well know, that is not really the point. I cannot understand how such a proposal was even considered; it is so reeking of injustice that it should not be in the bill at all.

The Convener: John Scott has a question on the register of crofts.

John Scott: A main aim of the bill is to create a register of crofts. Is that a good or a bad idea?

Professor Hunter: A register of crofts is an excellent idea, which is why the Crofters Commission was told to create one in 1955. It has been emphasised, but it always bears underlining, that it is an extraordinary state of affairs that a public body that was put in place by Parliament with, as almost the first thing in its founding legislation, the responsibility to create a register of crofts and keep it up to date, has never done that. That in itself is an argument for getting rid of the Crofters Commission. It demonstrably has not worked. To have a register, particularly a map-based register, would be a huge step forward. It is very much to be welcomed that there now seems to be a consensus that such a register can be created. As I said in my supplementary evidence, you could create a completely different way of administering the whole system around the register, but the prerequisite is to have a good up-to-date map-based register, which we have never had. A register is a good thing and it is essential.

The manifest incompetence, to put it no higher than that, of the Crofters Commission in never having done the job that it was told to do, means that I have a lot of sympathy with crofters who say,

"Why should we now pay the Registers of Scotland to do a job that a bunch of people in Inverness, drawing reasonable salaries from the public purse, have not done in half a century?" The crofter who says, "I do not see why I should pay for this," has a perfectly legitimate point of view. If the register was now being conjured up for the first time and crofters were expected to pay for it, that would be one thing, but for crofters to pick up the bill for the failures of the Crofters Commission over half a century seems a bit tough.

John Scott: So you think that the public purse should pay for the register.

Professor Hunter: Yes.

Karen Gillon: Why was it so difficult to put together a register? It seems extraordinary that, 50 years on, there is not a register and that we think that we can do it quite quickly. What were the barriers to doing it in the first place?

Professor Hunter: You should ask the Crofters Commission that; I am sure that it will tell you. When I have asked it in the past, it has said that putting together a register is complicated, that there have not been the mechanisms to enable that to be done, and that it has not allocated very much to the task. In recent times, it has allocated virtually no staff time to the task, which has simply been allowed to go by the board. As far as I can make out, whenever the commission has been asked why there is not an adequate register, it has simply said, "Well, it's all terribly difficult." I do not think that putting together a register is all that difficult, and it seems remarkable to me that the commission has been allowed to get away with that. If the task is so difficult, I presume that the commission could have gone back to Parliament at some point in the past half century and said, "You need to give us a few more tools to do the job," but, as far as I am aware, it has not done so, although I stand to be corrected. For whatever reason, a register has not been created. We should think of what, for instance, agriculture departments are able to produce in the way of returns from farms in this computerised age. Mr Scott will know that those returns are extremely comprehensive and are meticulously collected. If that can be done for practically every farm in the European Union, I cannot see why it cannot be done for around 15,000 crofts. It is simply nonsensical to say that creating a register is too difficult; I do not think that it is.

Alasdair Morgan: I take it that how many crofts there are is known and that we simply lack details about them.

Professor Hunter: We may not know precisely how many crofts there are, but we know about crofting in general terms, and we know many more details about some crofts than we know about others, including about their boundaries.

Alasdair Morgan: I am sorry, but I am not quite with you. What do you mean when you say that we know about crofting in general terms? Either we know or we do not know how many crofts there are.

Professor Hunter: As far as I am aware, the Crofters Commission produces figures that show precisely how many crofts there are to the nearest one, so we certainly know how many there are, but we do not know the precise boundaries of many of them or their precise tenurial status—in other words, who their tenants, owners or whatever are. That information is missing. In particular, it would help hugely if there were a map-based register, as opposed to a set of statements about who the tenants are or whatever. Obviously, that would also help in contexts to do with decrofting. Derek Flyn, who is beside the convener, knows much more about that than I do; you can ask him about it subsequently.

John Scott: How do crofts, which are essentially agricultural holdings, receive integrated administration and control system—IACS—payments, which many of them must be entitled to, if they are not currently precisely map-based organisations?

Professor Hunter: I presume that those that are in active agricultural use are mapped for that purpose. I stress that I am not an authority on the matter, so I am not the right person to ask about it. I think that that is the case, but many crofts are not in active agricultural use, of course—that is one reason why we are here—and will not receive those payments.

Elaine Murray: You say that the precise boundaries of many crofts are not known. Does that create a problem for a map-based registration system? If we start to try to define boundaries, will there potentially be conflicts between crofts over pieces of land?

Professor Hunter: Yes.

The Convener: That is a concise answer.

We move on to the duties of crofters and owner-occupier crofters, absenteeism and neglect.

Liam McArthur: In your written submission, which I found to be extremely useful and well written, you say:

"The simple solution to absenteeism would have been to revert to the commonsense position of 1886—that you can only be the secure tenant of a piece of land which you actually occupy."

Later, you say:

"It is illustrative of the Alice in Wonderland thinking inherent in this state of affairs that the present Bill seeks to

oblige all owners of crofts to live on or near them. Needless to say, no such provision would be contemplated for a moment in the case of other owners of land."

An interesting and powerful contrast is provided. I understand the problem that you raise about simply layering one set of legality on top of what is an already cluttered landscape instead of finding other mechanisms for dealing with absenteeism but, with regard to those two statements, your view about the extent to which absenteeism is a problem is not clear.

11:30

Professor Hunter: In a better-ordered world, Parliament assumed that someone would have security of tenure only if they resided on the piece of land to which the security applied. That was the driving assumption of the 1886 act and it was intended that that would be carried forward. In 1917, however, the courts found differently. At that time, or at some reasonable period thereafter, there was presumably an opportunity for Parliament to restate its intentions by overturning the judgment of the courts. It did not do so, for two reasons: first, world war 1 was at its height and, no doubt, there were other priorities; and, secondly, the problem did not seem to be as great as it later became. At that point, it would have appeared to most people to be unlikely that there would be absenteeism on a large scale—after all, the period after the first world war was when land settlement was at its height and the Government was buying land to create thousands of new crofts, so it would not have occurred to people that we would end up with huge numbers of people having the tenancy of crofts but not living anywhere near them.

Absenteeism began to be a problem only in the 1920s and 1930s, as the economy of the Highlands worsened and people moved away. Of course, until the appearance of the Crofters Commission in 1955, there was no way of dealing with absenteeism at all—creating a mechanism to address the problem was one of the drivers setting up the Crofters Commission. Those mechanisms have continued in one form or another ever since, and the bill is simply adding to and attempting to strengthen them. Where it is particularly attempting to strengthen them is in relation to absentee owner-occupiers—which is a term that contains an awful linguistic contradiction. Under the bill, the absentee owner-occupier will be forced, in effect, to live either on or close to the croft. I have said that that is an example of "Alice in Wonderland" thinking. That is a somewhat emotive phrase, but the thinking is heading in that direction. I do not see how on earth this Parliament can insist that the owner of five acres of bog in Lewis has to live on top of it or a stone's throw away while the owner of 50,000 acres can live happily all year round on the other side of the earth. I just do not think that you will get anywhere with that.

Bill Wilson (West of Scotland) (SNP): You could, of course, suggest that the owner of 50,000 acres might have to live somewhere near his land.

Professor Hunter: You could do that. If that is what you decide to do, I will cheer you on, but I will believe it when I see it.

Bill Wilson: What are the main causes of absenteeism? Have they changed over the past 50 or 100 years? Are they likely to change in the future?

Professor Hunter: The causes are the same as they have been from the 1920s onward, but the consequences are different because of the value that the land now has as a result of the current demand for crofts—in the 1950s and 1960s, you could get a croft for nothing because not many people wanted one, but now you would pay through the nose for one.

However, I would make a distinction in that, in the traditional crofting context, absenteeism still comes about through out-migration, with the younger generation going off to get jobs and make careers elsewhere. Ultimately, they end up inheriting the croft, even if they are living in Glasgow, Chicago or wherever. That has been the main reason for absenteeism from the 1920s. There is another type of absenteeism now, although I do not know whether anyone has worked out where the balance lies. People are now coming from elsewhere and acquiring crofts, and there might now be some absenteeism that is more to do with the use of crofts as holiday homes. There is no doubt that that sometimes occurs.

I am cautious about talking about that further as I have not studied it in detail, but I would think that the breakdown is still towards situations in which someone has inherited the family croft but no longer lives on it or near it.

Bill Wilson: I have two questions relating to the alternative scenario that you proposed in the additional evidence that you circulated by e-mail. First, in the example that you gave in your original written submission involving the Uists and the professor, you note that the Crofters Commission has a veto to ensure that a local person buys the croft and is not pressed out of the market. Would you still allow for that veto in your alternative scenario?

Secondly, would it be possible in your alternative scenario for the individual simply to rent out the house on the croft as a holiday home, thereby covering the cost of any financial penalty imposed?

Professor Hunter: I am trying to get away from the Crofters Commission's plethora of rules and regulations. If representatives of the commission give evidence—as no doubt they will do—they will tell you, as Para Handy said about Dougie, that one of the limitations on them is the negative nature of the controls that they have in such situations. In other words, it does not make much practical difference whether I assign the tenancy or sell the croft. As far as the practicalities are concerned, it is neither here nor there whether the assignation or the croft is sold. Tenancies are now being assigned for cash.

In the example that I gave in my submission, I proposed to assign the tenancy to the chap from Surbiton. The commission can veto that and it can go on vetoing my suggestions forever, in principle. I might try to assign the tenancy to various people in turn, and the commission can turn down those assignations every time on the basis that there is local demand, which my choices are not meeting. The commission can tell me that it does not like the guy that I am proposing to assign the tenancy to, but it cannot tell me, "Assign it to this fellow here instead." That is one reason why the process can go on forever. It takes up so much time. Much of it, in my view, is ultimately futile and pointless.

We could go to the other end of the spectrum and give powers to the crofting commission, or somebody, to allocate the croft to a person who is considered to be acceptable. However, I doubt that wider opinion would wear that—that would be going down a somewhat peculiar track.

Bill Wilson: Just out of curiosity, why do you think that wider opinion would not wear that? If there is currently a system of veto that can go on almost infinitely, with the tenancy eventually reaching the intended recipient or a local individual—thus illustrating the reason for the veto in the first place—would it not be intuitively simpler to have a list of local people who were looking for crofts and who should have priority?

Professor Hunter: I do not think that people, including many crofters, would accept that. The person who should ideally be getting the croft, from a social engineering point of view, as it were, might be the 20-year-old who wants to make a go of crofting, to revert to my other hypothetical example. If I have an assignation that is worth something, I can sell it to the hypothetical man from Surbiton for £100,000, let us say. The equally hypothetical 20-year-old from the locality might be able to afford £5,000 or £10,000 at a push.

For better or worse, you have, in effect, created a property right—the property of the assignation or tenancy—and allowed it to be traded in a more or less free market, with some restrictions. Now you are proposing to remove that right and, for the greater good, to enforce the transfer to the young chap. If the outgoer were a relatively affluent person in a good job somewhere else, that would not be quite so serious, but if the outgoing crofter was not affluent and he was told that he had to accept £5,000 from the young fellow down the road as opposed to £100,000 from the person from the south, that would not be acceptable.

Bill Wilson: In your written evidence, you say that the emergence of market forces might destroy crofting. I presume that what you have just described is the type of scenario that you think might destroy crofting.

Professor Hunter: Yes.

Bill Wilson: Where does that leave the committee? On the one hand, it could be argued that we could be unreasonably denying the outgoing crofter a retirement fund; on the other hand, if we allowed the outgoing crofter their retirement fund, we could be allowing the full introduction of market forces to destroy crofting.

Professor Hunter: That is the dilemma that you face.

Bill Wilson: Would you like to provide a solution for us?

Professor Hunter: Better people than I have tried to find a solution to it. It is one of the nubs of why the whole issue is so difficult.

In my written submission, reflecting on the history of all this, I mention that it is a bit ironic that a Parliament that was infinitely more radical than the present one is likely to be fenced all market forces out of crofting altogether in 1886. As I have tried to explain, a fence, as it were, was put around crofting and the old market forces—in the shape of the rent that was charged by the landlord and the landlord's freedom to do what he liked with his land—were shunted to one side. The landlord was left, in effect, as a non-entity in a crofting context and the landlord's powers in crofting are now minimal to the point of being virtually zero. It could be argued that, if a free market were introduced into crofting—some people, including a lot of crofters, favour that—the poor old landlord would be disadvantaged. If a free market is to be encouraged, the rents should be decontrolled. Why have a free market within the fence that shuts out the original free market? Why not just let the original free market back? There are a lot of real difficulties involved.

I am not saying that the scenario that I sketch out in my supplementary written submission, which involves a move towards a system of using financial incentives, would solve any of the problems that you have described; I am saying that it points the way to an alternative system that, although not creating the ideal crofting world, would at least provide more of a push in a

constructive direction without a plethora of rules and regulations. The rules and regulations will just not work—they have not worked up to now and they will not work in the future.

Elaine Murray: You spoke about the Crofters Commission preferring the Irish model, in which the state bought all the land from the landlords and transferred it to the individual crofters. However, the 1976 act came up with a compromise that introduced the right to buy. Surely, at that time, there was some realisation that the system was creating owner-occupiers who were not owner-occupiers in the normal sense but were subject to a different set of legislation. Was there no attempt at a definition of what that meant in 1976?

11:45

Professor Hunter: That was a highly contentious piece of legislation and it was proceeded by a vociferous debate within crofting—akin to what is going on currently but even more vociferous and with more entrenched opinions. At that point, not many people understood how relatively limited their ownership rights would be if they opted to buy. I apologise for putting the burden on his shoulders, but Derek Flyn can speak about the issue more authoritatively than I can. My impression is that the constraints on the owner-occupation that was created have emerged only as the system has developed. The trouble is that, once you have let the cat out of the bag or the horse out of the stable, it is difficult to go back.

One could argue that it would have been better for crofting if owner-occupation had never happened. Equally, one could argue that it would have been better if we had done what the commission wanted to do in 1968 and moved to an Irish situation. In the "crofting" areas of the west of Ireland—Mayo, Donegal and so on—we see what it would be like if there were no controls. That is what the commission advocated—every crofter would own his or her croft in exactly the same way as you or I might own a house or garden and would be free to do with it what they liked, subject to wider planning and other constraints. That might have been one solution. What we have at the moment is an awful mess—a bùrach, to use a Gaelic word.

The Convener: We are where we are.

Peter Peacock: There are various provisions in the bill to bear down on speculation, on which you touched in your exchange with Bill Wilson. There are some planning controls, a plan from the commission of which the Scottish Land Court will have to take account in future, decrofting provisions and provision for extending from five to 10 years the period during which a landlord will get clawback on a sale. All those provisions are designed to impinge in some way on speculation. What do you make of the clawback period that is proposed? Five years is quite a long time—would moving to 10 years be decisive? One could argue that it gives the landowner a longer chance to benefit unjustifiably from a sale.

Professor Hunter: I do not think that the clawback provision will make a huge difference, although I understand the thinking behind it. We will just have a lot more complexity. Giving the commission a role in planning, almost as a subsidiary planning authority, is stirring the broth even more than it has been stirred already.

In the last paragraph of my supplementary written evidence, I suggest that, for reasons of simplicity, decisions on decrofting as a preliminary to development should be left entirely to the planning authority. The Parliament might give the authority some responsibility to have regard to the wellbeing of crofting, but no extraneous body or commission should have a say in the matter beyond that. If there is to be a commission, it could be involved in drawing up the guidelines under which the local authority should operate, but the authority should determine decrofting and development in accordance with standard procedures. At that point, we might impose a levy on the development value of the land in question. That cash could be used to bring more land into crofting tenure and to create new crofts. Instead of trying to stop development and creating yet another plethora of procedures, plans and appeals, we would be imposing a financial levy to ensure that the wider crofting interest got some cash benefit from development.

Peter Peacock: Let me move on to a separate point. Given the history that you have spelled out in your paper and in your evidence today—the tensions and the political forces at work that created security of tenure as a means of addressing the very real social problems of that time—and given the fact that generations of crofters have succeeded previous generations from whom they have gained the benefit of the house that was built and the improvements that were made to the land and the byre and so on, succession is now an important part of how people feel about themselves, their family and their predecessors. Now, I understand from the policy memorandum—I have yet to clarify this with officials—that the bill includes provision that would allow the new commission to stop someone succeeding to a croft if the commission was not satisfied, I presume, that the person who would succeed to the croft would live on the croft. Given the history and the sense of history that people have, that is a pretty severe proposition for the new commission. The commission might not choose to exercise that power, but in theory it

could do so, as I understand it. What do you make of that? Would stopping such a succession be preferable to allowing the succession to proceed and then enforcing the absentee rules that apply to all other crofters? Do you have a view on that?

Professor Hunter: The issue is extremely difficult. My response would be somewhat akin to my earlier response to Mr Wilson about the pros and cons of giving the croft to the young chap for £5K or selling it to the other guy for £100K. Obviously, such a provision is an attempt to shift the balance back towards the wider crofting community interest as opposed to the individual crofter interest. Again, the issue would not be so bad—at least, it would not create such a furore—if crofts had not acquired, as is the case now, such a substantial monetary value. Clearly, apart from the financial aspects in that sort of case, there is also, for better or worse, a lot of emotion involved that in one sense is nothing to do with money.

Taking such a course of action would be pretty brave. It would certainly be possible to make a case for taking such action, in the wider crofting interest, but it would be an extraordinarily difficult thing to do. In so far as, for better or worse, the tenancy itself has become a piece of property—it seems slightly contradictory to talk of a tenancy as being a piece of property, but it is effectively a heritable right in its own right—the commission would be saying that, for the greater good, the succession should be stopped at a particular point so the successor will not get the benefit of the croft.

Equally—this perhaps goes back to my wider point that so much of the discussion about crofting seems to proceed in a vacuum, as if it had nothing to do with the rest of the world—one could make the alternative argument. I live in a reasonably nice house 8 miles outside Inverness that has—or at least I hope so—substantial monetary value. One might argue that, for the greater good of society in that area, rather than allow my son and daughter to inherit that house upon my death, it would be much better for the social wellbeing of that community if Parliament stepped in, took over the house and allocated it for a much smaller sum of money, or no sum of money at all, to somebody on the housing list in that vicinity. Such an argument could be made—it is quite like the argument that is being made with regard to crofting—but it would never be made, yet it seems to be okay to make that argument with regard to crofting. Such action would lead to difficulties.

Peter Peacock: I have one final point. There is a strong sense in what you have said today that we are fiddling with the deckchairs on the Titanic, so to speak, because crofting is heading in a particular direction and, no matter how much we adjust the deckchairs by introducing new detailed provisions into law, we will not make a lot of difference but just add to the complexity. Are you saying that, in one sense, the Parliament should pause and think much more deeply about the whole issue, including some of the more radical propositions that you have put forward, rather than continue to tinker with what will be essentially the same system with a few more sophistications and refinements?

Professor Hunter: Absolutely, yes. If I could give the Parliament one piece of advice that would be acted upon, it would be that. I think that the bill is just more fiddling, as you say, and will not achieve its objectives.

Having said that, it worries me a little bit that, despite both your own Government—if I may use that phrase—and the present Government's attempts to introduce crofting reform legislation and despite the Shucksmith committee of inquiry in between, we are not in general terms much further forward than when we started. It worries me a bit—in fact, it worries me a great deal—that legislators such as committee members and their parliamentary colleagues might, very understandably, come to the view that the problem is just beyond us and is insoluble. They might conclude that, no matter what is proposed, it will be shouted down by one group of crofters or another, so we should just wash our hands of the matter and let it go where it will. I think that that would be rather tragic and rather disastrous. However, I do not think that the objectives that Parliament is trying to achieve will be achieved by continuing to go down the road that it is currently set on.

The Convener: On that contentious note, I thank Professor Hunter for his attendance. If there are any other issues that he considers ought to be brought to our attention afterwards, he should feel free to share them with the committee in writing.

I suspend the meeting for a comfort break before we hear from the next set of witnesses.

11:56

Meeting suspended.

12:01

On resuming—

The Convener: We are running quite a bit over time—we were doing so from the beginning, given the subordinate legislation that we had to deal with. I encourage everyone to be brief in their questions and answers. We will now hear from the Scottish Government officials, who will explain each part of the bill in order and take questions on each part separately. I welcome the panel. Iain Dewar is the bill team leader, Bruce Beveridge is

the deputy director, Lyndsey Cairns is the policy adviser, and Alexander McNeil is a solicitor, from the rural affairs division of the Scottish Government.

I invite the officials to make opening remarks and to explain part 1. They will then take questions on part 1. Thereafter, we will move on to part 2.

Iain Dewar (Scottish Government Rural Directorate): Thank you, convener. I offer apologies from Richard Frew, who was due to be with us today but who has unfortunately called in sick. He was going to lead for us on parts 3 and 4, so we will do our best to cover them in his absence.

As I am sure members are all aware, the bill is the second bill on crofting to come before a Scottish Parliament committee in the past four years. During the passage of the Crofting Reform etc Bill in 2006, the Executive of the day decided to withdraw sections of the bill at stage 2 and to establish a committee of inquiry on crofting to take an independent look at what was required to secure the future of crofting. Professor Shucksmith was appointed in December of that year and brought together a committee that gathered written and oral evidence before submitting a report to ministers in May 2008. The Government considered the report: its response, which was published in October 2008, accepted some of the recommendations, rejected others and agreed to give others further consideration. Some of those proposals have been taken forward administratively, but others require changes in legislation. To that end, the Government prepared a draft bill for consultation. The consultation took place between May and August 2009. The results were analysed and published and the resulting bill was introduced to the Parliament in the past month.

Where we are today is the consequence of a clear process. Although there now appears among stakeholders to be an emerging consensus around the principles of the bill, there is still polarised opinion among individual crofters, which ranges from a desire to strip legislation right back to the core rights of tenants, which would be upheld by the court, and to leave the rest to the vagaries of the free market, to a view that current regulation is too weak and needs to be reinforced.

The bill recognises crofting's contribution to society as a regulated system of land tenure that promotes occupation and use of land in the Highlands and Islands. That, in turn, contributes to the Government's purpose of sustainable economic growth.

Lyndsey Cairns will now say a few words about part 1.

Lyndsey Cairns (Scottish Government Rural Directorate): Under part 1, the Crofters Commission will be reformed to make it more effective in delivering its core function of regulating crofting, and to make it more accountable to the people whom it regulates. The commission has already undergone some administrative changes in line with the Government's response to the Shucksmith inquiry, including the transfer of crofting development to Highlands and Islands Enterprise and the transfer of the administration of crofting agricultural grants to the rural payments and inspections directorate. The changes will better enable the commission to focus on crofting regulation and address issues such as absenteeism and neglect of crofts.

Evidence to the Shucksmith inquiry and in response to the Government's consultation demonstrated a desire for a more democratic regulator, and the bill would meet that desire by enabling the majority of commissioners to be crofters elected by crofters. The provisions in the bill differ from those in the draft bill that was in the consultation paper, which proposed the establishment of area committees. As responses to the consultation bill showed, although there was support for greater representation of crofters on the commission's board, there was concern about the potential for local disputes and there was a preference for an objective and dispassionate central body that would retain responsibility for taking regulatory decisions and actions. The bill aims to strike that balance. Furthermore, the commission would have greater scope to determine regulatory policy, in consultation with crofting stakeholders, to ensure that crofting is regulated not only in the interests of crofting but in the wider public interest.

It is also proposed to change the commission's powers to bring it into line with more conventional non-departmental public bodies that receive grant in aid and have the flexibility to spend their budgets as they see fit.

The Convener: How will the bill allow crofting regulation to take account of the very big differences that we know exist among crofting communities in different parts of the country?

Lyndsey Cairns: As I said, what is evident is crofters' desire for more input to the commission's role. If commissioners from different areas are able to provide local input in shaping the commission's policy and functions, those differences will be taken into account. That same kind of local input will come from the network of assessors which, as the consultation showed, proved to be popular with crofters and other stakeholders and will be retained under the bill.

The Convener: If more crofters with various perspectives are going to be involved in the

commission, might it be even more difficult to reach agreement than it is under the present system? Is there a case for devolving decision making to the crofting communities themselves, as Professor Hunter argued earlier?

Iain Dewar: That argument has been made. Indeed, in his committee of inquiry on crofting, Professor Shucksmith initially proposed a sort of federation of local crofting boards and the disbandment of the Crofters Commission. The Government rejected the second proposal but acknowledged that the commission could be made to be more accountable and to take into account differences in the different parts of the crofting counties. That was what was set out in the draft bill that went out for consultation.

However, responses to the consultation indicated no particular demand for a body that covered, developed policies for and took decisions about specific parts of the crofting counties. Many of the respondents felt that it would be better to retain a central body with representatives from the crofting counties, which would have greater responsibility for developing crofting policy for all the crofting counties. However, to ensure that the Commission is properly informed when taking decisions, it was felt that the assessor network should be retained to gather intelligence from local areas.

Alasdair Morgan: You propose to have up to six elected members and constituencies. Given what we have heard about the different patterns of crofting that have emerged in areas that are geographically close, such as Shetland and Orkney, how will you allocate the constituencies that the elected members will represent? Do you want them to represent homogeneous or heterogeneous areas? If all the different islands require their own members, would we end up with one member for each island and one member for the rest of Scotland? What are your ideas on that?

Iain Dewar: We gave a breakdown in the consultation document of what the area committees would be, and we got feedback from the consultation on what areas they should cover. However, the constituencies for an election would be a matter for subordinate legislation. We acknowledge that that would have to be considered carefully However, the consultation made it clear to us that a constituency that combined, say, Orkney and Shetland would not be terribly popular, not least because of the differing crofting practices in those places, and that Orkney would perhaps be better off in a constituency with Caithness, which has similar crofting practices. It would therefore be a challenge to draw up the constituencies from which each member would be elected, but it could be done.

Alasdair Morgan: Do you have it in mind that constituencies should be roughly numerically similar in size in terms of their importance to crofting, or are geographical considerations more important? The Boundary Commission faces similar problems.

Iain Dewar: Indeed. We would need to take account of the number of crofters in any given area, ease of access and the different types of crofting practice. A number of issues would influence the drawing of the constituencies.

John Scott: So, do you utterly reject the view of Professor Hunter and Professor Shucksmith that local area committees should be the way forward? Do you believe that the crofting commission should have a centralised committee structure?

Iain Dewar: I am sorry. Could you repeat the question? I did not quite hear it.

John Scott: I want just to clear up the point in my own mind. Do you utterly reject the view of Professor Shucksmith and Professor Hunter that there should be area committees or co-operatives in, for example, Orkney or Shetland, through which people would work together to sort out their own problems? You are not taking that route of travel.

Iain Dewar: As I said earlier, there was quite a lot of opposition to that idea throughout the consultation. For local committees or crofting boards to work effectively, they would need the support of the people. If, on the other hand, there appears to be no interest in the idea and people are concerned about the impact of local crofting boards and area committees, pursuing it does not seem to be the best idea.

12:15

John Scott: If there is to be no change in the function of the Crofters Commission, why change its name to the crofting commission?

Iain Dewar: It was felt that the new name would be more representative of the body's functions. Section 2 says that those functions will be

"regulating crofting ... reorganising crofting ... promoting the interests of crofting"

and

"keeping under review matters relating to crofting".

In the light of those functions, which mean that it will be acting in the interests of crofting, it seemed more appropriate to call it the crofting commission.

John Scott: I presume that the Crofters Commission has always acted

"in the interests of crofting"

and crofters. Is the change of name not simply more tinkering around the edges? What is the point? It will cost money to change signage, note paper and so on. I cannot see the point.

Bruce Beveridge (Scottish Government Rural Directorate): It is really meant to underline the strengthening of the commission's focus on its regulatory functions. It was mentioned earlier that some functions that the commission used to undertake have been devolved to Highlands and Islands Enterprise. It has shed some ancillary purposes and is focusing more on its core purpose. The feeling is that the new name will more properly represent the intended purpose of the commission.

Liam McArthur: Have you been able to put a figure on the costs of changing the name?

Iain Dewar: The costs are considered to be minimal, given that these days stationery with letterheads is produced using computer templates rather than being printed on pieces of paper, as used to happen. Further, as the Crofters Commission is moving to Great Glen house next month, there will be costs associated with new signage and so on in any case. The costs are not considered to be in any way significant.

Liam McArthur: You will have heard the discussion that we had with Professor Hunter, so you will know that it is not clear to us why the Government is proposing that the election should involve only part of the commission rather than all of it. What is the rationale behind that?

Lyndsey Cairns: Part of the objective is to ensure that, if the commission is to make decisions on and to regulate all matters affecting crofting, the board has the expertise and knowledge that it requires to carry out that function. It is proposed that having a mix of elected and appointed members will address that balance.

Liam McArthur: There is a concern that the proposal will create a two-tier commission, in which there are some members with a democratic mandate and some who are there because of their specific expertise.

Iain Dewar: One of the important considerations is that the commission is a non-departmental public body that manages a significant budget. It is therefore important that the people on the board of the organisation have not just knowledge and skills associated with crofting but the corporate skills that are associated with running a large body, including skills in finance, human resources and so on. It is not possible to guarantee that we will get people with those skills through elections. It was therefore considered to be important that the majority of the board be comprised of elected crofters, and that, in order to ensure that the board has the requisite skills across the piece to operate a large NDPB with a significant budget, ministers should be able to appoint a minority of board members.

Liam McArthur: Ministers will also appoint the chair. Was consideration given to allowing members of the board to agree who should chair it? If not, why not?

Iain Dewar: Consideration was given to that, but it was decided that it would be best for the minister to appoint the chair of the board, in so far as it is important that there is a good working relationship between the minister and the chair of the NDPB. We did allow flexibility for the minister to appoint either an elected commissioner or an appointed commissioner.

Liam McArthur: Will the board make a recommendation to the minister? How will the minister identify the chosen candidate for appointment?

Iain Dewar: The minister will consider the appointed and elected members and appoint the chair on the basis of the person that she thinks is best qualified for the post.

John Scott: In the case of the national parks boards, it was decided that it would not be the Minister for Environment who appointed the chair. There seems to be inconsistency in the approach, and I just wonder why.

Iain Dewar: The national parks were established under different legislation under a different Administration. I suppose that there is a difference there.

Karen Gillon: I have some questions about the election of the commission. First, will you confirm whether it will be possible to register a croft in joint names?

Iain Dewar: I look to Alexander McNeil to help me out here. Under the legislation, a "crofter" can only be a single person.

Karen Gillon: Do you intend to publish a draft order before stage 2 to set out more detail on the electoral system, the electorate and so on, so that we can understand and get a feel for that?

Iain Dewar: Yes—we could bring forward draft regulations before stage 2.

Karen Gillon: Will the election be by the first-past-the-post system or by single transferable vote?

Iain Dewar: That will be considered further as the draft regulations are developed. In the consultation document, we mentioned the single transferable vote system, but further details of the conduct of the election will be worked up in the draft regulations.

Karen Gillon: At present, the majority of people who are registered as crofters are men. I presume that only registered crofters will be eligible candidates. Is that the case?

Iain Dewar: Yes, that is correct. The policy is that the registered crofter will be the one who is entitled to vote. Again, that will pose difficulties because some crofters have multiple crofts and are single, whereas other crofters have one croft but might have a large household of five adults of voting age. It will be challenging. Clearly, it might not seem fair if one crofter who has, say, five crofts had only one vote whereas a household of five people of voting age and only one croft was entitled to five votes. In considering the voting power that is accorded to any person, we need to take account of the extent to which they are affected by regulation by the commission.

Karen Gillon: That throws up several questions. I think that we would want written clarification about how the voting system will work.

I also want to raise an issue about the equal opportunities dimension of the electoral system and, in particular those who are eligible to stand. Only people who are registered as crofters will be eligible to stand and, in most cases, even where the male and female members of the family operate a croft, it is the man who is registered as the crofter. How will you deal with the equal opportunities consequences of an electoral registration system through which women are excluded from standing for election?

Iain Dewar: I certainly would not say that they will be excluded. There are a number of women crofters. There is no attempt in any way to discriminate between men and women, it is just—

Karen Gillon: With all due respect, you are discriminating if the basis of being able to stand is being a registered crofter and, in the majority of cases—I have done research on the issue—the registered crofter is the man, even when both parties croft. The woman will be excluded from being eligible to be a candidate because she is not the registered crofter. There are equal opportunities consequences that you have not, I think, thought through properly. You need to do that ahead of the stage 1 debate.

The Convener: In a previous existence, I was involved in appointments to the Crofters Commission and to trust ports. The Government might want to examine Ullapool Harbour Trustees, which has elections for some board members in which the whole community takes part. There could be a system in which the whole crofting community has a vote. We will obviously have to return to the issue.

Karen Gillon: The Scottish Government is taking a power to change or veto the crofting commission plan. Given that the new commission will be democratically elected, which is portrayed as making it more accountable to crofters, why is that power thought to be necessary?

Bruce Beveridge: It is really to ensure that the aims that the commission sets out drive at the heart of what the legislation intends. I acknowledge Karen Gillon's point, but that is why the provision exists. A veto would be a drastic step, but it is appropriate for the Government to have the opportunity to encourage changes to ensure that the plan covers what it needs to cover and drives at the heart of what is intended.

12:30

Karen Gillon: So democracy is okay as long as people do what they are told.

The Convener: I think that that is more of a question for the minister. We should move on.

Elaine Murray: In response to Karen Gillon, Iain Dewar has touched on one of the points that I wanted to raise, but I also want to ask about the electoral roll in regard to absentee landlords whose crofts are being worked by somebody else. Is it the absentee landlord or the person working the croft who has the vote? If you are going to write to the committee with more detail about the electoral system, you might also want to address that point.

Karen Gillon mentioned the plan. Proposed new section 2D of the 1993 act states that, in exercising its functions, the commission "must have regard to" any plan that has been published and approved but only that the Land Court "may have regard to" the plan when it is considering an appeal against the commission's exercise of those functions. Why is there not an obligation on the Land Court to have regard to the plan?

Iain Dewar: I understand that it is quite unusual to limit the discretion of the courts by requiring them to do certain things. The language that is usually used is "may have regard to", but in practice they almost always do have regard.

Bruce Beveridge: The court would look at whether the plan interacts in any way with the matter that is before it and, if it does, one would expect the court to have regard to it. However, if the plan is not relevant to the matter that is before the court, the court does not need to take up its time on requiring a submission on the plan and so on.

Elaine Murray: My reading of the bill is that an appeal would be against the way in which the commission was exercising its functions, so you would think that, in that case, the plan would be pertinent to the nature of the appeal.

Bruce Beveridge: In which case the court would take the plan into account. That tends to be how things are applied.

Peter Peacock: The bill provides that, for the first time, the commission may charge for regulatory decisions. That is not the case currently and it is, for obvious reasons, a controversial proposal. The accompanying documents make it clear that, to some extent, the commission's ability to pursue absenteeism and other matters to the full extent will depend on its income flow, so there may be a relationship between the income that is derived from the charges and the commission's ability to pursue absenteeism under the new provisions. Given that this is a heavily state-regulated system, why has it become necessary now, at this point in history, to seek to levy charges for regulation when that has not been the case before?

Iain Dewar: The main policy thinking was to do with the particular regulatory applications involved. The view was taken that not all the applications that are made to the Crofters Commission are necessarily in the wider public interest and require to be paid for by the general taxpayer. For example, when there is an application to decroft land or to apportion the common grazing for one person's individual use, the chief beneficiary of those regulatory actions is the individual crofter rather than the wider community or society. It was therefore considered that it would perhaps be more appropriate, in some cases, for the commission to be able to levy a charge for processing those types of regulatory applications.

Peter Peacock: Is there not a central contradiction in that? On the one hand, you are saying that, through a decrofting application, or on apportionment, the person will derive a benefit. The implication of charging is that there is a financial benefit, yet, by bearing down on speculation, other parts of the bill try to say that crofters should not benefit from that asset to the extent that they might otherwise have done. Is it not contradictory that you acknowledge value by charging but try to stop the release of value to the individual through other provisions in the bill?

Iain Dewar: Not necessarily. The ultimate effect of the financial instruments is to discourage activity that might be deemed to harm crofting, such as decrofting or apportioning common grazings, and to try to reduce speculation on croft land.

Peter Peacock: I accept that that is your answer, but I do not necessarily agree with it.

What do you propose on charging? You are establishing a power for the commission, but do you expect charges to be levied?

The commission will be democratically elected, so I presume that some candidates could stand for election on the basis that no charges should be levied—that could be their slate for election. If the new commission decided not to levy charges, would that impinge on its ability to pursue activities?

Iain Dewar: If I recall correctly, the bill allows for charges to be prescribed and the 1993 act defines "prescribed" as meaning prescribed by regulations, so any fees would be set out in a statutory instrument. Is that correct, Sandy?

Alexander McNeil (Scottish Government Legal Directorate): Yes.

Peter Peacock: If fees were set out, that would enable but not require the commission to levy charges. Is that right?

Iain Dewar: If regulations required charges to be levied, they would have to be levied.

Peter Peacock: What would happen if crofters stood for election on the basis of no charges and had an electoral mandate for that?

The Convener: I do not think that that would be possible. We need to move on.

Peter Peacock: Why would that not be possible?

The Convener: We will move on to the register of crofts, to which Lyndsey Cairns will give a short introduction.

Lyndsey Cairns: Part 2 establishes a new map-based crofting register, which will provide crofters with more legal certainty about the extent of and interests in their croft. The Government proposed the establishment of the register in response to calls from stakeholders for a map-based register and to a recommendation from the Shucksmith inquiry. The bill gives the responsibility for establishing the new register to the keeper of the registers of Scotland, who is responsible for maintaining other property registers.

Crofters will benefit from registration as it will provide them with greater legal certainty about the extent of and interests in their croft. After registration, that will not be open to further challenge. Over time, that will end boundary disputes.

A misconception is that the standard security provisions in the draft bill were the driving force behind the register, but they were not. People register title in the land register not in order to borrow but in order to have more confidence that they are the registered owner of the defined piece of land, with certain rights. The same principle applies to the proposed new register.

The new register will eventually supersede the current register of crofts, but the commission will continue to keep a record of any regulatory decisions about crofts.

As the financial memorandum says, the Government has agreed to fund the capital costs that are associated with establishing the register, which are estimated at about £1.5 million. However, the Government will not fund the individual registration of crofts. That cost will be met by the person who triggers registration.

The Registers of Scotland has reviewed the estimated cost of registration, which has significantly reduced from an original estimate of £250 to between £80 and £130 per croft registration.

The Convener: As we are short of time, I will use my convener's discretion as to the questions that need to be asked. John Scott's question is quite important.

John Scott: Why does the Government think that the Crofters Commission has not thus far been able to produce a comprehensive and accurate register of crofts? How can the Government instil us with confidence that the new commission, which is largely the same body, will be able to do so in future?

Iain Dewar: It is important to note the distinction between the current register of crofts, which is an administrative register and which has never been required to hold maps, and the proposed new register of crofts, which will be more akin to the land register of Scotland and which will utilise geographic information systems and mapping technologies to allow accurate maps to be produced to determine the extent of crofts.

The existing register includes a rather rough description of the area and general location of a croft, and that has led to a number of bitter boundary disputes over the years. The new register seeks to address the issue, which arises because the current administrative register of crofts might not be deemed to be 100 per cent accurate. The commission has told us that, in many cases, that is a consequence of its not being notified by crofters of changes to certain interests in the croft. Under the legislation, such notification is required.

It is important to be clear about the differences between the current register and the proposed new register. I hope that I have indicated why the current register is not deemed to be 100 per cent accurate—although, with regard to the information that it is required to contain, it is not wildly inaccurate.

John Scott: It is just incomplete.

Given that it was presumably easier to create the old register than it will be to create the new one, now that there will be a requirement to be utterly exact in terms of mapping, are you certain that you will be able to overcome the previous barriers that you have identified when you address the more difficult task of creating a new register?

Bruce Beveridge: The way in which the new register will operate is largely akin to the way in which the land register has operated since 1979. Although some boundary disputes arise on entry to the land register—we expect that to happen with the new register of crofts—it is accurate to a very precise degree. When it reviewed land registration, the Scottish Law Commission came to the conclusion that the system had worked effectively throughout that time and had overcome those challenges.

John Scott: If there is a boundary dispute that involves lawyers, I cannot see that a figure of £80 to £130 will go anywhere near resolving it—lawyers charge £80 just to pick up the phone, never mind write a letter. I am sorry—I did not mean to be rude; I know that you are a lawyer.

Bruce Beveridge: I assure you that I did not take it in that way.

The figure of £80 relates to the registration application and the processing of that application by the keeper of the register. The opportunity to complain about a boundary that has been set following an application to the register comes once that application has been processed. A notification procedure follows, at which point someone may challenge where the boundaries are, if they wish to do so.

It is fair to say that, in land registration, boundary disputes have largely been about small slivers of land rather than incomplete titles. If both parties were represented by lawyers in such a dispute, of course the cost involved would be likely to be more than the cost of registration, but we do not anticipate that that will be necessary in most cases.

12:45

Iain Dewar: Boundary disputes take place at present, and people go to the Scottish Land Court to resolve them. One of the policy drivers is to bring an end to that type of dispute by putting in place a clear process in which, over time, crofts will be registered on a new crofting register that clearly identifies the extent of and interests in the croft. That will remove any dubiety over who is the tenant, who is the landlord and who has the associated rights and responsibilities as said persons under the 1993 act as amended.

John Scott: I admire your optimism that that can be easily and cheaply done, but I do not share it.

Bruce Beveridge: It will certainly not resolve all cases; the disputes that currently end up in the Land Court will continue to do so. However, it might result in disputes arising earlier due to the triggers that will require the intervention of registration.

Peter Peacock: I want to follow up John Scott's point about the role of the keeper of the register. If one reads the procedure, which is quite complex, one finds that the commission does most of the work. The application is made to the commission, which checks it against its existing register and checks for defects, and liaises with the applicant. The commission then sends the application to the keeper, who uses the title page to register it. The application then goes back to the commission and then out for consultation and so on. It appears that the commission does most of the work, but the keeper gets the fee. What is the policy justification for that? It is not clear what added value the keeper provides, given that the commission does most of the work. Why could the commission not just keep the work rather than passing it to the keeper?

I know that Mr Beveridge is a former keeper, so he should perhaps declare an interest.

Bruce Beveridge: No, I am a former deputy keeper—and the solicitor on this panel has just become head of legal services at the Registers of Scotland.

In response to your first point, the fees go to the keeper because the keeper is a separate entity that is entirely self-funded—as must be the case—and is not subject to vote funding. The role operates under arrangements that are analogous to a trading fund; with regard to fees, the keeper has to recover the cost of what they do.

With regard to the spread of work, the commission simply comments on the detail of the application in cases in which it holds other information on its register. If, for example, the commission holds competing information about the identity of the crofter, it would be flushed out at that stage; that is the sort of thing that such a check is intended to do.

The keeper's work involves making up the register and the title sheet, in much the same way as is done with the land register. The register is held by the keeper, who is entirely responsible for controlling and maintaining it, which includes adding the mapping and doing the detailed work on the completion of it. That is how the work is split.

The commission's work is intended to minimise the work that the keeper does by checking the accuracy of information, which minimises the cost that the keeper must charge to the greatest extent practicable. It also ensures that any errors relating to the identity of the applicants are picked up at the earliest stage.

Peter Peacock: Another issue, which I am sure people will find amazing in many respects, is that, according to the policy memorandum, the composition of the new register may take upwards of 30 to 40 years because some of the triggers may not work until that point. During that period, the commission will have to keep its own register up to date.

There is, as I understand it, a proposal in the financial memorandum whereby, as part of the voter registration scheme, the commission will be given around £25,000 to bring the current register up to date. What is the point of having a new register if we are updating the current register? In effect, the commission will have to duplicate part of the work for 30 to 40 years, which will produce two registers. That does not seem terribly cost effective.

Iain Dewar: I will highlight the distinctions and the differences between the two registers. The new register will obviously be map based, which is significant. You asked about the collection of data for elections. Powers under the 1993 act will allow the commission to update the current administrative register to ensure that crofters' names and dates of birth—the core pieces of information that are needed to ascertain the electorate for a crofting election—are correct. It is not duplication but an exercise to obtain the information that is necessary to conduct an election. As I said, the purpose of the new register is to provide certainty on the extent of and legal interests in a croft.

Peter Peacock: Take the example of crofters who are living in perfect harmony with their neighbours and have done so for all time. They know roughly where their crofts' boundaries are but do not worry if someone encroaches by a few metres. What benefit, if any, do they derive from registering their crofts in those circumstances—which must be the circumstances of the majority of crofters—especially if they must pay a fee to do so and face all the other costs to which John Scott alluded?

Iain Dewar: People will get confidence and peace of mind from registering the title to their land on the land register. There will be no doubt about who has the interest in the property or about the extent of that property.

Peter Peacock: We are about to spend £1.5 million of public money on the register.

Presumably, that must provide a benefit to the individual or the state. For the life of me, I cannot see what that benefit is. If someone is in dispute, they will go to the Scottish Land Court; if not, they do not need to do anything and can live happily with their neighbours. Why must we have a map-based register of the sort that is proposed? What does it add? What value does it bring in the circumstances that I have described?

Iain Dewar: I can only reiterate that it provides the same type of advantage that one gets from registering title to property in the land register.

Bruce Beveridge: In public policy terms, it is highly appropriate to have a ready, map-based means of identification of land and interests in land. Many states have gone down that road. If someone is living in complete harmony with their neighbour and intends to continue living on their croft without changing it, they may not notice the fact that there are now boundaries around it. However, the bottom line is that the system as a whole will work better.

The Convener: I am conscious of the fact that we plan to meet the commission and the keeper. Unless members have other pressing questions on this part of the bill, I suggest that we move on.

Karen Gillon: Given that the process will take some time, can you clarify the procedure for registration of the land on which a croft lies if that croft changes hands through sale and has not yet been registered?

Iain Dewar: A change in the landlord's interest in croft land is a trigger for registration. Using modern technologies, it is possible during conveyancing to cross-reference between the new crofting register and the land register, which is the register of landowning interests. A process could be put in place to identify where there has been an exchange of the ownership of land in the crofting counties and to ask whether any of that land is under crofting tenure. The exact details of how that process will work will need to be worked through in more detail in subordinate legislation.

Karen Gillon: That is important. I have read the papers and understand that the responsibility to register will lie with the landlord, not the crofter. What will the landlord need to do to discuss matters with the crofters? How will disputes be resolved? Crofters who have been crofting for a period of time could have a new landlord who perhaps does not know who crofts where and who draws a boundary and puts it in the land register. What requirements will there be to consult? What appeal mechanisms will crofters have?

Iain Dewar: The same process is involved irrespective of who registers the land—whether it is the tenant through a regulatory trigger point that relates to them or the landlord as a consequence of transferring ownership, for example. They will have an obligation to register the croft, and the notification process that Bruce Beveridge mentioned earlier will then apply. Those who will be notified include the tenants on and landowners of adjacent land.

During the consultation, there was quite a lot of debate about who should have to pay for registration. A large number of crofters argued that landowners should be required to pay because they will receive rent and they should know what they are receiving rent in respect of. The landowners said that, given the interest associated with the land, which is basically of little value to them and is primarily of value to the crofters, the crofters should pay for the croft registration.

The Government's approach was to identify a series of trigger points that will require first registration; thereafter, the same process will apply. All those with an interest would be notified and the right to challenge will exist. In Karen Gillon's example, if the landlord triggered and made the registration, all the crofters would have the right to challenge it.

Karen Gillon: That particular trigger is potentially a recipe for disaster, because somebody outwith the croft would have registered the interest. What provision has been made in the financial memorandum for the costs associated with the Land Court settling such disputes? With that trigger, there seems to be the potential for many boundary disputes to go to the Land Court.

Bruce Beveridge: We are keen to encourage, although perhaps not legislatively, as much consultation as possible among those who are immediately affected by registrations, whether they are individuals or landowners.

Karen Gillon: Will that be set down in the statute or the regulations?

Bruce Beveridge: No. As I say, we do not envisage a legislative vehicle for that. However, guidance on implementation and so on will be offered, and those who have a relationship with their neighbours or landlord will tend to consult, especially if they are encouraged to do so, and that will generate the eradication of many disputes.

Lyndsey Cairns: I would like to build on that. It will be possible to make challenges in the Land Court, and the number of challenges may increase in the short term. It is outlined in the financial memorandum that that is an unknown, but croft boundary disputes that are heard in the Land Court should tail off over time as more croft lands become registered. We tried to make it clear in the financial memorandum that it is difficult to estimate how many challenges the Land Court might hear.

Karen Gillon: The potential for absentee landlords to cause conflict in crofting situations from the other side of the world—we discussed that earlier—with little regard to or concern for crofting boundaries, as they get minimal rents from crofts, may cause more problems than are being envisaged in the interim period. I would be glad if you could come back to us with more information on that.

13:00

The Convener: We move on to part 3, on the duties of crofters and owner-occupier crofters.

Iain Dewar: Part 3 clearly sets out the responsibilities of both tenant and owner-occupier crofters to reside on or near the croft and to work the land. In its response to the Shucksmith inquiry, the Government agreed that crofts need to be occupied and used, but suggested that that aim would be better achieved by clarifying the respective duties and improving existing mechanisms for tackling absenteeism and neglect.

The bill seeks to define an owner-occupier, which will put an end to the current situation in which owner-occupiers, as landlords of vacant crofts, are open to action from the Crofters Commission at any time. Evidence to the Shucksmith inquiry and in response to the consultation on the draft bill demonstrated that a majority of crofting stakeholders were in favour of more effective means of addressing absenteeism and neglect in relation to croft land.

The Bill proposes replacing the current arrangements, which have resulted in high levels of absenteeism, with a considerably more robust process. The commission currently has discretionary power to tackle absenteeism, and action on neglect depends on a complaint being made or the consent of the landlord being given. The bill will place a duty on the commission to take action in respect of absenteeism and neglect by both tenant and owner-occupier crofters.

Importantly, however, safeguards will be put in place that will allow the commission not to take action when there is a good reason not to do so, or when a crofter has given an undertaking to remedy the situation or to sub-let the croft. Those measures will help to ensure that crofting contributes to economic growth by requiring crofters to be resident on or near their croft and to put it to some form of productive use.

I refer to some of the comments that were made earlier. The responsibilities that are associated with the requirement to live on or near the croft and to work the land are associated with the land and the tenure under which that land is operated. Shucksmith was very much of the view that that requirement should apply equally to tenants and owner-occupiers. In relation to the rights of owner-occupiers and the requirement for them to adhere to those responsibilities, if an owner-occupier wants to be removed from those obligations, they would have to apply to resume the land or to decroft it. They would then no longer have those responsibilities, but in such cases, the land would no longer be croft land.

John Scott: If someone wanted to farm the croft land, or perhaps to have more than one croft, as young entrepreneurial crofters might, they would have to have the land decrofted if they had two crofts that lay more than 16km apart. That is an inhibitor. Why did you decide on 16km?

Iain Dewar: We did not decide on 16km. That distance has been in place since the Crofters (Scotland) Act 1961, when it was increased from 2 miles, which it had been under the Crofters (Scotland) Act 1955, to 10 miles. Then, in 1976, we got all metrified and changed it to 16km.

John Scott: It is still 10 miles in old money.

What causes absenteeism? We have learned a lot from Professor Hunter today, but I would like to hear your views on the causes of absenteeism.

Iain Dewar: The causes of absenteeism are wide ranging. In the past, there was much more succession within the family—the young person would take up the croft and work it. We heard earlier that perhaps in subsequent generations, people have been upwardly mobile and have left the township to go to Glasgow or Edinburgh to get a job. Some absenteeism is generated when those people inherit the croft but decide not to go back and take up the reins.

Bill Wilson: I have a short question to follow up on John Scott's question. Let us imagine that the young crofter lives 16.5km from one of his two crofts. Is there flexibility for the commission to say that the fact that someone lives 16.5km or 17km away from their croft is not really a great problem?

Iain Dewar: Yes. There is flexibility in the legislation that enables the commission not to take action where there is a good reason not to do so.

Bill Wilson: The commission is not required to take action.

Iain Dewar: Yes—if there is a good reason not to take action. When an elected commission draws up its policy plan, it may well decide that where a crofter resides slightly more than 16km away from the croft but commutes regularly to it and makes active use of it, that would be a good reason not to take action against them. There is the flexibility that the member describes.

The Convener: What about the situation of a crofter on Skye who has one croft near Portree

and another near Dunvegan? Is that absenteeism?

Iain Dewar: Again, it would depend on whether they were ordinarily resident within 16km of the croft. If that were not the case, strictly speaking, they would be absent. As I said to Mr Wilson, there is discretion. If that absentee crofter was making active use of both their crofts, the commission might well have a policy that that was a good reason not to take action against them.

John Scott: I just want to develop that point. If I were a crofter in Wick, would I have to live there? If so, I would not be able to work here in the Parliament, because I would have to be resident within 16km of the croft. That seems utterly unreasonable.

Iain Dewar: The residency requirement has been in crofting legislation since the beginning. On flexibility, the onus is being put on the crofter. If they are not going to abide by the residency requirement, they have to explain why they cannot do so. They can apply for consent to be absent. The commission may well grant such consent, depending on the circumstances and its policies. The onus is on the crofter to explain the reasons for their absence and it is for the commission to decide, on the basis of the policy that it draws up, whether those are good reasons.

Peter Peacock: In your policy recommendations, you have emphasised the desire of the Shucksmith committee to try to equalise the obligations on owner-occupier and tenant crofters. Currently, if someone becomes an owner-occupier, they disqualify themselves from eligibility for various grants for the croft, such as housing grants, grants for fencing and the like. Given that you are trying to equalise the obligations, will you equalise access to those grants in future? In other words, when the bill is passed, will crofters who are owner-occupiers have the same entitlement to access grants that tenants currently have?

Iain Dewar: We are considering that at the moment because, as you say, if we are going to apply responsibilities equally to tenants and owner-occupiers of croft land, we should apply the supports equally as well.

Peter Peacock: Is that the Government's clear policy intention?

Iain Dewar: It is something that we are considering. It would require changes to the statutory instruments that underpin the crofting counties agricultural grant scheme and so on.

Peter Peacock: Paragraph 58 of the policy memorandum alludes to the fact that family assignations will not necessarily be automatic in future. That is a significant proposal, for the reasons that were set out by Professor Hunter when I asked him about the issue earlier.

Will it be possible for the assignation to take place and then for the conditions of residency and occupancy to be complied with, or will it be open to the commission to say that it will not allow the assignation to take place? As I understand it, the latter would end the process of succession at that point, without the family having the normal opportunity to comply, and would be quite a big material difference.

Where is the relevant provision in the bill? I cannot locate it—perhaps it is written in legalese.

Iain Dewar: I will explain the differences between assignation and bequest. Assignation is when a transfer takes place among the living, under section 8 of the 1993 act, as amended. The commission can intervene in an assignation only when the assignation involves someone who is not a family member and who lives or intends to live more than 16km from the croft; the commission cannot intervene in an assignation that involves only family members. That seems iniquitous with regard to delivering the policy goal of ensuring that crofts are occupied and actively used, so we are seeking to remove the distinction between the treatment of family assignations and the treatment of non-family assignations.

With regard to bequests, at present there is a misconception that the Government will not allow bequests where the proposed legatee is not going to live on the croft or within 16km of it. Under the current legislation, the commission has no role in relation to approving or denying bequests, and that will continue to be the case. However, the Government considers section 10 of the 1993 act to result in an iniquitous situation. That section says that, in a case in which someone bequests a croft to someone who is not a member of their family, the landlord has a right to object to that bequest for whatever reason, although they have no right to object in the case of a bequest to a family member. The proposal in the bill is to remove completely the right of a landlord to object to a bequest. There has been a little bit of confusion about what the proposed changes in the bill actually do.

13:15

Peter Peacock: I should make it clear that my question was simply about assignations; I was not raising a point about bequests. It would be helpful, however, to get clarification about where the provisions for that are in the bill. I could not find them. I am not expecting that clarification right now.

Iain Dewar: Certainly. I can write to you about that.

John Scott: That is different from agricultural holdings and tenancy legislation, which provides a precedent. In old-fashioned tenancies, assigning a holding to a family member was succession, but it was not possible to assign the holding to somebody who was not a family member. That is presumably where the provisions come from. If we consider the rest of Scotland, what is proposed is a further departure from current accepted practice in agricultural tenancies.

Iain Dewar: The grounds on which a person may object to a bequest to a non-family member could surely apply equally in respect of a bequest to a family member, whatever the objection might be.

John Scott: I do not see why at all. It is succession. It is heredity. That is the whole point of succession—that is why the holding goes to family members. If somebody from outside is brought in, that is not the same and it is not iniquitous for the landlord to have the right to object.

Karen Gillon: Perhaps I am slightly confused and am not understanding this properly. If I have a croft and a son who lives in Glasgow, for example, I cannot necessarily assign that croft to him. Is that right? The crofting commission would have a right to object. If I do not assign the croft to him but bequeath it to him after I die, nobody can do anything about that.

Iain Dewar: Correct. If you wished to assign the croft to your son and your son gave an undertaking to take up residency on the croft or within 16km of it and to work it, the commission would take that into account and approve it. It would explore the intention.

Karen Gillon: But if I just left it and worked the croft to the best of my ability until I died, my son would get the croft anyway.

The Convener: We can perhaps get clarification on that in writing.

Karen Gillon: Even as an absentee, my son would still get the croft, at least initially. He might then comply.

Iain Dewar: The action would be taken after the bequest had been taken.

Karen Gillon: Some time later.

Iain Dewar: Whereas, when it comes to assignation, the commission is seeking proactively to prevent cases of absenteeism arising in the first place.

Karen Gillon: You seek to extend the period when a landowner can share in the profits from the subsequent sale of decrofted land from five years to 10 years. You argue that on the basis that it will act against speculation, as the speculator can access the full value of the sale within five years. However, five years is not an insignificant length of time, and the proposal could simply be seen as extending the right of landowners to benefit. Could you set out more fully your thinking about that? What evidence do you have for believing that a period of 10 years would be more effective at ending speculation than one of five years?

Iain Dewar: The evidence is largely anecdotal. We have heard that there have been many occasions when an absentee acquires a landlord's interest in a croft but has no intention of crofting there. The landlord might sit on it for five years, and then decroft it and sell it off. Five years was considered to be a time for which people would be willing to wait before receiving all the profits that are associated with the purchase of the croft for 15 times the annual rent, which is the normal amount, and subsequently selling it on for a significantly greater amount of money. Doubling the time period will reduce the likelihood of that kind of thing happening, although I point out that it applies only where the subsequent sale is made to a non-family member. If, for example, you sell a piece of land to a family member who wishes to build a house on the site, the proceeds will not be required to be shared. We are seeking to address the issue of absentees who have no real interest in crofting but who instead seek to acquire crofts and exploit them by developing them into several sites for housing.

Karen Gillon: Might there be any benefit in levying on absentees the kind of annual charge that Professor Hunter suggests in his submission? Have you considered such a proposal and, if so, what conclusion did you reach?

Iain Dewar: We saw Jim Hunter's paper at the same time as the committee saw it. The proposal had not been put to us before, although I have to say that, with regard to the proposal to deal with absenteeism through the crofting register, one sentence in particular set alarm bells ringing for this civil service man. That sentence was:

> "any such system would need to be in some way monitored and enforced."

The fact is that things generally become more complicated and bureaucratic when they have to be monitored and enforced. For example, how do you know whether someone is absent and should be paying the said amount?

Bruce Beveridge: Thinking on the hoof, I suspect that such a charge would need to have some regulatory foundation. There would need to be some means of staying on a register, or the charge itself might be taken to be a tax and would therefore operate through a very different mechanism.

John Scott: Would it attract VAT?

The Convener: We seem to have strayed into part 4. Do the witnesses have anything to add to what has been said already?

Iain Dewar: In the interests of time, I am happy to leave the introductory remarks for this part of the bill and go straight to questions.

The Convener: I believe that Alasdair Morgan's question on this part is quite important.

Alasdair Morgan: It is in connection with the Whitbread v MacDonald case, which I suppose is something of a cause célèbre. Would the bill's provisions affect that judgment in any way, or does the loophole still remain? I can read you the details of the case, if you like—or do you want me to write to you with them?

I suggest, convener, that we settle that question in correspondence, unless the witnesses have an answer for us.

Iain Dewar: Could you elaborate on the details of the case?

Alasdair Morgan: It is from 1992.

Bruce Beveridge: Is that the decrofting case?

Alasdair Morgan: Yes. It is about clawback. As a result of the case, if a crofter used the provisions now included in section 13(1) of the Crofters (Scotland) Act 1993 to request that the landlord transfer ownership of the croft to a third party or nominee, the transfer would not trigger a clawback liability.

Iain Dewar: The matter was recently brought to our attention in a letter from Alasdair Allan MSP. We are looking at it and, once we have provided advice to ministers, the view might well be taken that it would be useful to lodge an amendment at stage 2 to close any perceived loophole.

The Convener: Does anyone else have any pressing questions?

Peter Peacock: On the proposed new power for the commission not to grant decrofting applications if it so chooses, even if there is planning consent for the piece of ground, I understand why you would want to do that to suppress speculation, but what would the practical effect have been had that provision been in place during the celebrated Taynuilt case and the Ocraquoy case? Would it have changed the outcome?

Iain Dewar: The Taynuilt case involved an application to decroft an entire croft for a housing development. The charge was that the Crofters Commission had not fully considered the impact on crofting. The commission has additional grounds to take into account, including the sustainability of crofting in a locality and, had it been able to take those considerations into account previously, it might have been less likely to grant the application to decroft an entire croft, if indeed the sustainability of crofting in that locality near Oban was under threat.

Peter Peacock: I understand your point. You are right to say that the commission will have the discretion not to grant an application. However, if the bill is passed, the person could still execute the planning consent even if they did not decroft, as I understand your proposal. In that case, unlike an individual crofter who might want to build a house and might not be able to generate a loan because they do not have a decrofted piece of land, the developer could just go ahead anyway, could they not? Would refusing permission to decroft have had any practical effect on the outcome in Taynuilt?

Iain Dewar: I believe so. It is considerably more profitable to develop on land that is not croft land because of all the responsibilities that come with being an owner or a tenant of croft land. The possibility that a piece of land on an application might not be decrofted would have an impact on the speculative value of that land and its development. It is highly unlikely that someone would seek to develop land that was under crofting tenure; they would almost certainly want to have it decrofted first.

The Convener: That concludes this evidence session. I thank the officials for their attendance. Any supplementary evidence should be given to the committee clerks as soon as possible.

That concludes the public part of today's meeting. Next week, some of us will be in the Western Isles to continue our scrutiny of crofting. The week after that, on 10 February, we will be back in Edinburgh to hear evidence on the bill from legal experts, crofters and landowners. I thank the press and the public for their attendance.

13:29

Meeting continued in private until 13:50.

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