



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 10 March 2010

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
6th 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:

Roseanna Cunningham (Minister for Environment)
Iain Dewar (Scottish Government Rural Directorate)
John King (Registers of Scotland)
Andy Smith (Registers of Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 10 March 2010

[The Convener opened the meeting at 10:02]

Subordinate Legislation

Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60)

The Convener (Maureen Watt): Good morning, everyone, and welcome to the committee's sixth meeting of the year. Please ensure that your mobile phones and BlackBerrys are turned off, as they impact on the broadcasting system.

The main purpose of the meeting is to take evidence on the Crofting Reform (Scotland) Bill. The evidence session will be the committee's fifth and final evidence session on the bill. First, we will hear from Registers of Scotland, then we will hear from the Minister for Environment and officials. However, before we do so, we have subordinate legislation to consider under agenda item 1.

The Management of Extractive Waste (Scotland) Regulations 2010 is a negative instrument. The Subordinate Legislation Committee did not make any comments on the regulations, no member has raised any concerns, and no motion to annul has been lodged. Members appear to have no comments to make on the regulations. Do members therefore agree not to make any recommendations on them?

Members indicated agreement.

Crofting Reform (Scotland) Bill

10:03

The Convener: Under agenda item 2, the committee will take evidence on the Crofting Reform (Scotland) Bill. I welcome the first panel of witnesses: John King is registration director and Andy Smith is deputy keeper at Registers of Scotland.

I will ask the first question. What benefits will there be from creating a public crofting register?

Andy Smith (Registers of Scotland): The benefits will be similar to those from the land register. There will be greater certainty about the extent and ownership of crofts. We see that as being the main benefit.

John King (Registers of Scotland): Using the same principles that underlie the land register should provide certainty over a croft's extent and boundaries and certainty over who the tenant or landlord is. Our experience of the land register is that that can ease future transactions, so we envisage that the crofting register will aid the regulation, administration and support of crofting in the future. For third parties, it will be simpler and easier to obtain information on crofting once the register is complete. Once we have a fairly complete register, we should have a very detailed and clear picture of the amount of land in Scotland that is covered by crofting, so we will have more transparency. The hope is that that will facilitate future policy making.

Peter Peacock (Highlands and Islands) (Lab): Before I ask my question, let me pick up on those points about certainty and ownership. Crofting is largely a tenanted system, so the ownership refers not to the croft per se but to the croft land, which would be the whole estate rather than the individual crofts. Can we be more clear on that point?

Andy Smith: The crofting register should provide certainty about the extent of a croft as well as its tenancy. The map-based register will make it clear who the tenant is and what the extent of the croft is.

Peter Peacock: If a crofter already has certainty, because crofters have lived on the croft for generations and worked the land on the basis of current boundaries that are not disputed by other tenants, what greater certainty will a map-based register add?

John King: A map-based register will certainly aid a third party—a person who is not the crofter—who wishes to obtain information on a particular croft. That could be a person who is interested in transacting in any way in respect of the croft and

who just wants certainty about the extent and boundaries of the croft. The register may also aid the landowner, depending on what information the landowner currently has on the croft holdings on his or her land.

Peter Peacock: So, if the crofters are quite happy with the boundaries, as in the situation that I described, the benefits will accrue to third parties rather than to crofters per se.

John King: The benefits will accrue to a number of parties. I guess that the situation is akin to land holding, whereby a person buys a house and occupies the land on which the house is situated. Very rarely do people have recourse to their title deeds, but such recourse is available if an issue arises or if they need to transact with the land. The certainty that the title provides aids that process.

Peter Peacock: Let me move on to the issue that I really wanted to cover.

From going around the crofting areas that we have visited in Shetland, the Uists, Sutherland and Caithness—and from other visits that individuals have no doubt made over the years—it has become clear to us that historical croft boundaries are very difficult to ascertain, although there are some maps kicking around from previous bits of legislation. For example, we have heard about ploughing regimes in the Uists where the boundary between the crofts is so fine—it is not defined in any other way than the ploughing line—that the thickness of a line on a map would represent a wider area than the actual boundary. We have also heard about entire islands being crofted on an unfenced basis, so in a sense there are no boundaries between the crofts. We have also heard about boundaries originally being marked by peat walls or stones in the ground, so that by and large the boundaries do not follow straight lines, and fences then having been erected that are sited on the logical fencing line rather than on the actual boundary of the croft. The nature of such boundaries is very different from property boundaries on an urban or suburban estate. What implications does that have for the mapping exercises and for the precision and scale of the maps that will be required?

John King: It brings a different set of challenges, but they are not unknown challenges. With a map-based register, the key is accuracy and, in turn, certainty about where the boundaries are. We have used the Ordnance Survey maps for the land register for almost 30 years, so we are very much aware of the limitations of that scale of map and how that can impact on the depiction of boundaries. We have built up a range of tools and techniques for dealing with that, which we see as being readily applicable to the problems—or challenges, I should perhaps say—that we might

face with the crofting register. With any map base that plots boundaries, there can be a need to supplement the information—in effect, to supplement the edge that is drawn on the map—and there are various ways of doing that. We use a range of techniques for the land register. For example, we can supplement the mapping information by way of an additional plan, if that helps. Where there is a need for accuracy about boundaries, we can include an inset showing the boundary line at a different scale from the base scale. We can also supplement with various pieces of textual information. For example, through the use of letter and arrow referencing, we can show the line of a map, explain boundary features and include measurements. Given the size of a typical croft, we are aware that areas of crofting land are often smaller than much of the rural land that we register at the moment in the land register. We realise the need for absolute clarity. That is what we are working towards.

Peter Peacock: In all of that, you have told us about what you could do as the keeper, but I understand that as it is currently drafted the bill requires crofters to produce these maps and submit them to you. Will the crofter be able to use the techniques that you describe with ease or is it likely that they will have to use a surveyor or someone else to help them? Also, what standard of map do you want to receive from crofters for you to be satisfied that you have the precision—the fine detail?

John King: As with the land register, our view is and always has been that it is very much up to the individual applicant whether they use a surveyor or solicitor. As we do for the land register, we will issue detailed guidance on our standards for maps. We will also provide guidance on the additional information that should be supplied in conjunction with the map to ensure clarity and certainty. The standard of maps that will be required is an issue that we have been considering in conjunction with the bill team. We want to make things as straightforward as possible for the applicant—the crofter—and ourselves. One way in which we can achieve that is to make available to the crofter a copy of our base map. In that way, the scales in the information that the crofter completes and that we subsequently use will be consistent. As I said, we will support the process with an appropriate level of guidance.

Peter Peacock: That is very helpful. You have said that you would usually recommend the use of a surveyor or solicitor. Do you always recommend the use of one or the other or can people undertake the process without the use of a surveyor or solicitor?

John King: I am sorry if I did not make that clear. Our view is that it is very much up to the

applicant whether to use either a surveyor or solicitor if—

Peter Peacock: Or either.

John King: Or either. Yes. My understanding is that it is not typical for a crofter to use either a surveyor or solicitor in applications to the current register. There is nothing in the bill or our requirements that would necessarily alter that.

Karen Gillon (Clydesdale) (Lab): In your experience of land registration, how many people do not use a solicitor or surveyor to make their application?

Andy Smith: The bulk of the applications that we currently deal with are based on deeds and deed plans that have been around for some time. In the main, there will be no involvement of a surveyor. The applications come to us and we make a comparison with the map. Surveyors are more likely to be involved in applications for new builds and new developments, where there is a need to depict the extent of the properties on the deed plan so that we can make a comparison with the Ordnance Survey map.

Karen Gillon: Do those applications normally come through a solicitor?

Andy Smith: Yes.

Karen Gillon: With the current register of crofts, people tend to do it themselves, but as the new one will be legally binding, is it not likely—from your experience with the land register—that people will need to use a solicitor when they provide their initial map to you?

10:15

Andy Smith: Our interpretation is that in straightforward cases a crofter registering a croft will not need to use a solicitor, as long as they can complete the application form and supply the necessary details about the extent of the croft, preferably by depicting it on an Ordnance Survey map. That should be sufficient and that is how we foresee it happening.

Alasdair Morgan (South of Scotland) (SNP): Is it not the case that, with the land register, solicitors are already involved in any event because there is a property transaction and therefore it is sensible for the solicitor to be involved in submitting the plan?

Andy Smith: That is correct. In any property transaction, a solicitor is involved anyway.

John Scott (Ayr) (Con): Am I correct that in the integrated administration and control system—IACS—mapping exercise with the department of agriculture, solicitors were rarely involved and that the proposed register will be on a smaller scale? If

I understand correctly, you are saying that if a sketch map is submitted to you that can be equated to boundaries on the Ordnance Survey map, you will be able to turn that into a recognised map.

Andy Smith: As John King said, all that we require is sufficient information on a copy of an Ordnance Survey map to allow us to transfer that information accurately to our Ordnance Survey map. So something like an IACS plan, if it was confirmed as showing the extent accurately, would work.

John Scott: When boundaries change, such as when a boundary is the centre of a river or burn and the meanders move over time, do you have the ability to record that?

John King: That is an issue in the land register—various conveyancing conventions sit behind what is on the register. I do not yet know how that will work for the crofting register. We have not considered the issue specifically, so I would need to get back to the committee on that. However, we do not consider it to be an insurmountable obstacle, given that it is not a particular difficulty in the land register. We could narrate on the title entry for a croft that the boundary is the mid point of a stream. Equally, if it was a fact that the boundary would change as the position of the stream changed, we could narrate that, too.

John Scott: I have a question about trigger points and how long it will take to complete the crofting register. In evidence, you have said that it could take up to two generations. Is that how long you expect it to take for all land in crofting tenure to be registered?

John King: We probably cannot answer that. We have been dependent on the bill team to provide us with that information. Our assessment is based on the number of trigger events that will happen in a given year, which is based on information that has been provided to us by the bill team and the Crofters Commission. We have made no independent assessment of that.

Karen Gillon: Is it the case that, for land in the crofting counties, the land register carries a disclaimer saying that it cannot be certified that the land is not under crofting tenure?

John King: When land in the crofting counties comes on to the land register, any crofting tenancies on the land are deemed to be what is known as an overriding interest. Basically, that says that there is something that affects the land, but which does not have to appear in the land register. It is very much up to the party who is applying for registration to decide whether they want to make us aware that there are crofts on the land and thereby have it noted in their land

register entry. Some people do and some people do not.

Karen Gillon: So, if there were a croft register, there would presumably be no need for that kind of disclaimer in the land register, which means that there would be benefits to people who are engaged in conveyancing or property development.

John King: I emphasise that it is not a disclaimer as such. It is more of a note that says something like, "Subjects in this land register title are impacted by crofting tenancies." It is a note for general awareness. It does not lessen the value of the title in any way.

Andy Smith: The fact that the two registers could be compared would certainly be a benefit.

Karen Gillon: The benefit would primarily be to people who want to purchase property in the crofting counties, as they would be able to see which land is under crofting tenure and which land is not. That part of the bill might act against another part of the bill, which tries to deal with some of that.

Whom would the information in the crofting register be available to?

John King: Under the bill, the crofting register will be a public register, so the information will be available to anyone, for any reason.

Liam McArthur (Orkney) (LD): You have identified benefits such as administrative simplicity for policy makers and landlord interests. However, as Peter Peacock suggested, many issues around crofting involve tenure and tenancy. Under section 10, a certain amount of information will require to be provided for the title sheet of crofts in the crofting register, including the names and addresses of the croft tenant, owner-occupier, landlord and so on. What is the purpose of the keeper having that information? One can understand why the Crofters Commission will need to retain that information but, from what you have said about the purpose of the crofting register, it is not clear why the keeper of the registers will.

John King: Our position is that the bill sets out the information that should be in the register, which, to an extent, is based on the information that is currently held in other public registers, such as the land register or the old general register of sasines. The intention is to enable people to find out from a single source the pertinent information about a croft, such as the extent and boundaries of the croft, the name of the tenant and the name of the landlord.

Liam McArthur: You will be aware that concerns have been raised about not only the approach that is being taken to the establishment

of the crofting register but also the risk of duplication, which is what my question is concerned with. One could argue that such information should be with the crofting commission rather than the Registers of Scotland—one could even go so far as to say that it should be the commission that holds the map-based register, which is something that we have heard argued in evidence to the committee. What is your justification for keeping information about crofting tenants in the crofting register?

John King: I agree whole-heartedly that we must avoid duplication if it brings with it additional costs. Certainly, through our discussions with the bill team and the Crofters Commission, we intend to ensure that there is no duplication and that we do not end up with two organisations holding the same information.

From the discussions that we have had so far, I understand that the information that we will hold for the register will be different from the information that the crofting commission will hold.

Karen Gillon: If there were tenants on a piece of land or in a property that is registered with the land register, would that be noted on the land registry registration?

John King: Only if the lease was in legal terms a long lease—a lease for commercial property of 20 years or more. In that case, we would note that information on the title to the land. If it was a short residential lease, the information would not be noted.

Karen Gillon: How would that work for an agricultural, farming tenancy?

John King: The same principle would apply. We would register who is the title holder for that area of agricultural land. If the land was subject to a long lease—a lease of more than 20 years—we would note that on the title sheet. If the lease was for less than 20 years, we would not note it—it would not be brought to our attention.

Karen Gillon: If the land was subject to a long lease, would you note who the tenant was or would you just note that the land was subject to a long lease?

John King: We would provide short particulars of the relevant lease: the term of the lease and who it was by and to.

Peter Peacock: You talked earlier about the title page and title to the land. In the proposed system, if you were a crofter, having the title to the land would not imply any ownership of the land. In legal terms, what does having the title page, as opposed to having title to the land—in the normal home ownership sense—mean for the crofter?

John King: The entry in the crofting register will indicate who the tenant is—that will be the key information. Reference to the title page is a reference to the land register. In the crofting register, something akin to that that is more relevant to the register and the nature of crofting tenancies will need to be included.

Peter Peacock: I just want to be clear. You do not think that being on the crofting register will have the implication of giving title to the land—withstanding the fact that the word “title” is used in the title sheet.

John King: No. Our understanding is that the register will be a register of crofts. It will narrate who the tenant is and who the landlord is.

Alasdair Morgan: We have heard different views about how useful other maps, such as IACS maps, to which John Scott referred, or even older maps going back to the turn of the previous century, might be. Do you anticipate being able to use them at all in the process of defining the boundaries of and registering crofts?

John King: We have had discussions with the bill team and have looked at the IACS maps. Our initial conclusions were that there is not necessarily an IACS map for every single croft. Some of the maps that we have seen did not include the full extent of the croft. A number of the ones that we saw excluded the croft house and other buildings. The IACS maps did not always use the most current and up-to-date version of the Ordnance Survey map, which we would certainly prefer to use if we are starting out with a new register, because that would reinforce and aid accuracy.

In general, the IACS maps were good, high-quality maps and the depictions of the boundaries on them would be sufficient to allow us to transpose detail on to our map base. If a crofter wished to use one of those maps as the basis for what they sent in to us, we could certainly work with that.

Alasdair Morgan: Is it fair to say that although the IACS maps would not give you a definitive map, they could be of great assistance in getting you where you want to go?

John King: We would not take the IACS maps and use them as the basis for the crofting register, because we would have to validate every IACS map that came in, but we certainly see them as being of assistance to us and to crofters.

10:30

Alasdair Morgan: Another point that has been raised with us is that, if the trigger-point approach is used, with two neighbouring crofts being registered some time apart, we might end up with

bits of land in between them that were not part of a croft and, therefore, might come out of crofting tenure. Would you consider it to be part of your duty when a croft was being registered to check whether an adjacent croft was already registered and ensure that no gaps in between had inadvertently been left out of the maps because of the method of mapping? In other words, if a township was being mapped incrementally, would you ensure that everything was in the register and that there were no bits of unregistered land?

John King: At the moment, we have been looking at the other side of the coin: we would certainly check existing registered crofts to identify any overlaps. We have considered checking for underlaps, but we would have to discuss that as the register progressed to determine whether it would be useful to applicants for us to point out that a croft that was being applied for did not abut an existing croft. There may be a good reason for that situation and we want to find out whether we should offer that service on an on-going basis. If it would be helpful, we would certainly be willing to do it.

Alasdair Morgan: What would trigger that decision? You would have to do it right at the beginning; otherwise, we might end up with underlaps all over the place, which might result in access restrictions or removal from crofting tenure further down the line. Would Government regulations be required to stipulate that you had to check for underlaps or would it simply be a policy decision?

John King: It could be done either way. It could be done as a matter of practice, but it could be set out in some form of regulation.

Alasdair Morgan: Supposing that we wanted to know that it was not just a possibility but would happen as a certainty, how would we be assured of that? Who would tell us definitively?

John King: If you wanted it to be stated definitively that we would check for underlaps, it might be preferable to set it out in regulations. We could certainly give an undertaking to explore that with crofters and find out how best it would work.

Underlaps and overlaps also arise with property transactions, but a much greater framework of support sits around such transactions and helps to identify whether boundaries overlap or underlap. We do not necessarily have the same framework to sit around the crofting register. We have mooted with the bill team the idea of offering some kind of pre-map report service to applicants, whereby they could submit the plan that they intend to use and we could say whether it was acceptable for us. We could comment on whether there were any overlaps with adjacent crofts and we could easily extend that to commenting on any underlaps.

Underlaps are difficult because there could be a good reason for them. What length of gap is an underlap? Where do we draw the line? However, we could consider identifying underlaps.

Alasdair Morgan: I suppose that there has to be a reason for any gap. The reason is either that it is not part of the croft that is applied for and belongs to, or is tenanted by, somebody else, or that there is a mistake in the mapping and the two people have prepared their maps separately instead of getting together to do it. We have to be sure at the beginning that the reason will be investigated and either that it will be established that people are happy that an underlap exists for a good reason or that, if there is no good reason, it is fixed by both maps using the same contiguous boundary where the crofts abut. We are interested in whether that will happen.

Andy Smith: As John King says, it is difficult to assess when that should happen and what investigation could be carried out. When an application is made and it appears that there is a gap between a croft that is already on the register and the one in the application, it is not readily investigated, other than possibly through the Crofters Commission commenting on that and asking whether the land in the gap is intended to be in one croft or the other.

Alasdair Morgan: I do not want to pursue the point indefinitely, but surely just talking to the crofters—the one who is registering and the one whose croft his croft might abut but for the short strip of land—would establish whether there is a mistake or a genuine reason for the gap.

Andy Smith: I think that the information would be available anyway. The croft that is to be registered will be shown on the register to allow other crofters to see whether they have any issues with what is proposed. Perhaps there would be an opportunity then to identify whether there is a strip of land that should be within either a croft that is on the register or the new croft that is being added.

John Scott: Can I paint a scenario in which a boundary changes? If a new fence is required, rather than tear out the existing fence line and replace it exactly where each stob came out, someone may leave a gap and put up a new fence on one side or the other. That happens commonly, certainly in agriculture, but could it not lead to disputes? The practicalities of erecting another fence mean that there would be a gap of 1m to 1.5m, and someone would want to leave a gap so that stock, such as sheep and lambs, could not get caught and wedged in between the two fences. I can see where we will end up. If, as Peter Peacock has mentioned, there are arguments about the width of a plough furrow in establishing

a boundary, the erecting of new fences will also cause a problem.

That is an observation; I also wanted to ask about IACS maps. I am surprised by the letter from the Government, in which it states that

“it is extremely important to note that the boundaries on these maps do not relate to croft boundaries but to fields that are used for the purpose of claiming agricultural subsidies.”

I find that bizarre. Is there a piece of legislation that governs crofts differently in that respect from the rest of rural Scotland? In the original IACS mapping exercise, it was definitely the boundaries of the farm that were required. I am somewhat at a loss to understand why it is now said that IACS maps do not take in the boundaries. Can you shed some light on that?

John King: No, I am afraid that we cannot. It is beyond what we are involved in so far as registration is concerned.

The Convener: It might be better to ask that question of the minister.

John Scott: Accepting the Government's point at face value, what maps would you use? If you are unable, at the direction of Government, to use IACS maps, which maps would you use as a basis for the mapping exercise—the 1896 maps, the 1911 Inland Revenue maps or something else? What maps will you compare the mapping exercise to in order to validate it?

John King: Our working assumption has been that we would be required to hold a map-based register, and our base map would be a current, up-to-date version of the Ordnance Survey map. Getting crofting data on to that map would depend on the plan that came in from the applicant, who in most cases would be the crofting tenant.

That takes us back to our preference that, if we can supply a map that the crofter then completes, we can be readily satisfied that it will meet our requirements and in turn, we hope, be straightforward for the crofter to complete, too.

Bill Wilson (West of Scotland) (SNP): Another scenario relating to the missing strips of land might be that a crofter registers his croft then, after a couple of years, a neighbouring crofter registers an adjacent croft. On finding that there is a 2ft gap between the two crofts all the way down the line, the two crofters, being reasonable human beings, say to each other, “Let us split the 2ft gap: you get a foot of it and I get a foot of it.” As the first crofter has already registered his croft and now needs to change his croft boundary, would that be considered a re-registration for which he would need to pay the same fees again? Is that a complex issue, or could that be done without any problem?

John King: We envisage that that would require an update to the register, so a further application would need to be made to have that part added to the croft. We would charge a fee for that.

Bill Wilson: In that case, it would be advisable for any crofter who wishes to register to convince his neighbours to register as well. Otherwise, he could find that he needs to update the details about the left-hand side of his croft two years down the line, about the right-hand side of his croft three years down the line and about one of the other boundaries four years down the line. After that, of course, the river might move.

John King: I guess that the key is to try to get things right first time. If a crofter who applies for registration has some dialogue with neighbouring crofters, we hope that such issues will come to light at that point in time. I take the point that any subsequent change to boundaries will impact on what is currently on the register. However, from our perspective, we need some event—some sort of application to be made—for us to change the register.

Elaine Murray (Dumfries) (Lab): The bill enables a crofter to apply to register a croft, but we are not clear whether a group of crofters, or possibly a crofting township, may—for reasons of economies of scale in using solicitors or surveyors or to avoid the sort of boundary problems that we have just discussed—register their crofts in one application. In your understanding, will that be permitted under the bill?

John King: We are not aware that that would be barred under the bill. The bill allows a party or group of people to apply for voluntary registration. From our perspective, we would get great efficiencies if a whole township was to apply en masse, as mapping the properties would then be a more straightforward exercise. It would also be easier for us to give support and guidance about our mapping requirements and to work in tandem with whoever was drawing up the maps, whether that was the crofters themselves or an appointed surveyor. We would certainly welcome such applications.

Elaine Murray: Will you be able to help by, for example, providing Ordnance Survey maps on which to mark croft boundaries and so on? Will that be possible within the terms of the bill?

John King: Our understanding is that parties will be able to apply for voluntary registration, so I am not aware that a township will be precluded from making an application. I certainly hope that it will not be, as we would very much welcome such applications.

Elaine Murray: Where there was an appetite to make such an application, presumably you would encourage communities to take that approach.

John King: Yes, we hope that that would resolve some of the issues that have been aired about underlaps and overlaps, as we would get more clarity about the boundaries of all crofts at the one time.

Liam McArthur: This question has probably been answered already.

The written submission suggests that, because of the arrangement that Registers of Scotland has with BT, the potential efficiencies and cost savings that could be made are relatively limited. However, the response to Elaine Murray's question suggests that community-based approaches would be very much encouraged, not least because they would allow you to deliver a more efficient service—and, therefore, at a reduced cost—and because of the desirability, as was mentioned in response to Bill Wilson's question, of getting it right the first time. Given the benefits of such an approach, should the bill perhaps not simply be permissive but move towards advocating such community-based planning exercises?

John King: That is a difficult question, because it is quite a policy question. I guess that it would create the maximum opportunity for us to have an efficient process if we were registering a group of crofts at the one time rather than individual crofts on an ad hoc basis.

Liam McArthur: The written submission also suggests that, by the time that the various processes necessary have been gone through, the earliest that it is anticipated that registrations could be made under the new system is mid-2012. Is that right?

John King: On the basis of the current assumptions, that is right.

Liam McArthur: If that is allied to the concerns that we have picked up in evidence about the length of time that each of the triggers would take before there is a complete mapping exercise, things could stretch out over two generations or more. The fact that registrations cannot take place before 2012 reinforces that. Is there nothing that you could do to bring things forward?

10:45

John King: The timescale is fairly standard for delivering a new, reasonably sophisticated information technology system to support the register.

John Scott: The Government has said that it will carry out the mapping of common grazings, but the bill does not seem to contain provisions that would allow the results of that mapping exercise to be entered in the crofting register. How will the bill as introduced provide for common

grazings to be recorded in the crofting register once the Government has mapped them?

John King: I am afraid that I do not know the answer to that question. The minister could be asked it.

John Scott: Crofts have other rights associated with them, such as access rights or the right to take seaweed or cut peat. Others have alluded to such rights. How will a complete record of rights be registered?

John King: In our discussions with the bill team, we are looking to identify what ancillary information it would be appropriate to enter in the register. If that includes the various rights that are attached to a croft, whether they are access rights or rights relating to seaweed or septic tanks, we would be happy to narrate them if provision is made for that in the bill.

John Scott: I have a question for my information, having cut peat a long time ago. Someone might or might not have the right to cut peat on land that they have tenure of. If they had such a right, would a separate map have to be attached that showed where that right adhered to?

John King: There is perhaps no hard and fast answer to that question. We have the same issue with the land register. In some cases, we will depict on a map the land over which a right of access can be enjoyed; in other cases, we may verbalise that right and include it in writing in the land register. It depends on the facts and circumstances. If something is easy to depict, it will go on the map; if it is not and it is easier to verbalise, verbalising it is perhaps the way forward.

John Scott: Although we could put on a map where peat was cut 20 years ago, the area will, by definition, move as the peat is cut. I do not know how such a right would be defined. There could be disputes if people suddenly started to encroach on other people's pieces of land and we talked about things such as the hill to the left of the burn.

John King: Yes. Perhaps it easier to depict on a map a septic tank on an adjoining piece of ground.

John Scott: Something that is immovable.

John King: Yes. You have made a strong argument for not including in a plan a right of the type to which you refer.

John Scott: For not including it?

John King: For not including it in a plan, but including it in the register. The fact that the right exists could be narrated without saying that it attaches to a particular piece of land.

John Scott: That seems to be an untidy solution, but I am not sure what a tidy solution would be. However, I thank you for your information.

Karen Gillon: I want to go back to the IT system issue. Are you commissioning a new IT system?

Andy Smith: A new register will be designed and built.

Karen Gillon: There is no reason why that new IT system could not be designed, built and held at the crofting commission.

Andy Smith: We have been asked to hold the registers, so—

Karen Gillon: One argument that has been given to us is that you already have the IT system, but you are saying that you do not and that it will need to be designed and built.

Andy Smith: We already have the land register IT system.

Karen Gillon: A system.

Andy Smith: Yes, and we have expertise in developing such systems. We are in the midst of replacing the land register system. The new register will have to developed such that it interacts with the land register. That is what we are planning to do. The short answer to the question is that an IT system could be built anywhere to create the register.

Karen Gillon: Could it be built in such a way that, even if it was held in a different place, it would interact with the land register?

Andy Smith: I see no reason why not.

The Convener: As members have no further questions, I thank the witnesses for their attendance. If any issues occur to you as a result of today's evidence, perhaps you will share them with the committee. Given that we have virtually finished taking evidence and are about to draft our report, we will need to have the information before Monday.

10:50

Meeting suspended.

10:53

On resuming—

The Convener: I welcome Roseanna Cunningham, the Minister for Environment. I also welcome her officials: Bruce Beveridge is deputy director in the Scottish Government rural communities division; Iain Dewar is the bill team leader in that division; and Heather Wortley is a solicitor in the Scottish Government legal directorate. We will move straight to questions—

[*Interruption.*] I am sorry, minister, I understand that you wish to make a short opening statement.

The Minister for Environment (Roseanna Cunningham): I want to make a brief statement, albeit that, following a telephone call from the clerks this morning, it will be briefer than was intended.

Thank you for inviting me to committee. It is important to remember the origins of the bill. It was born out of the 2006 Crofting Reform etc Bill and the decision at the time to establish a committee of inquiry on crofting to look independently at the changes that would be needed to reverse the decline in crofting. On the back of that, the Government prepared a draft bill and took to the road to hear crofters' views. Following a careful analysis of all the responses that we received, we amended the draft bill before we introduced it to Parliament.

Part 1 of the bill concerns a reform of the Crofters Commission. The Government believes that it has struck the right balance following the consultation by proposing a more democratic and accountable commission that has the flexibility to determine the detail of its policy. Our consultation showed that a clear majority of crofters oppose any move to decentralise decision making to a more local level for fear of losing objectivity and the dispassionate assessment of the issues at hand. There was concern about going to the local area boards. All the special conditions of which the commission currently has to take account in respect of each regulatory decision have been stripped out and left for the newly elected commission to determine.

We believe that the commission of the future might well decide to limit the number of crofts that any one person can have, or it might decide on the minimum or maximum size of crofts. That is the beauty of democracy and of empowering crofters to make the decisions that are needed to ensure that crofting thrives.

I turn to the crofting register. The majority of people agree that a proper register would be of benefit to crofters and crofting, but it is vital that it will add value. I am not really willing to commit resources simply to add maps to the existing administrative database if neither the maps nor the database will have any real significance in law. The proposed new register will clearly define the extent of crofts and provide much greater certainty about who has the rights and responsibilities in respect of crofts under the legislation. We believe that it is not unreasonable to expect people to pay for registration in exactly the same way that others pay to register their property interests.

The community mapping idea is interesting and we want to promote it. We will therefore invest

£100,000 to subsidise group registrations of crofts to the tune of £20 per croft where 10 or more crofts are registered at the same time. If communities organise themselves and reach an agreement on the boundaries of the crofts in their township, seek mediation services where there are disputes and submit block applications to the keeper, we will certainly support that.

The principle that each first registration is open to challenge must also be preserved to ensure that the process is fair. Once the croft is entered on the register it will be possible to change that entry only on a very limited set of grounds.

There has been quite a lot of discussion in the committee and elsewhere about neglect versus absenteeism. It is my firm belief that both have to be addressed, given that crofting not only delivers the management of land but is instrumental in building cohesive and strong communities. Such communities can be built only through having a permanently resident population that sustains the local economy and vital public services.

I understand the attachment that some people have to the area in which they grew up or where their family is from. The bill proposes, for the first time ever, to allow owner-occupier crofters to let their crofts, in the same way that a tenant can sublet their croft, without fear of losing it. The bill recognises the need for flexibility to accommodate those who travel away for work but who have no other main residence. Some crofters work in the merchant navy and others need to leave to study or seek medical treatment and so on. That is why the bill provides the ability for crofters to seek consent to be absent and for the commission not to take action where there is a good reason for that. However, the bottom line is that crofters—both tenants and owner-occupiers—have a duty to occupy and work the land. That is one of the conditions of crofting tenure and it has been a fundamental principle of crofting right from the start.

It has not been easy to address speculation on the development value of croft land. The commission will now be a key agency that planning authorities must consult when they produce development plans. That should reduce the incidence of inappropriate developments that threaten the sustainability of crofting in an area. Nevertheless, it is important that the commission and the Scottish Land Court have the final say when it comes to removing land from crofting tenure. Our view is that the increased scrutiny of decrofting and resumption applications, irrespective of whether planning consent has been granted, will achieve that. The extension of the clawback period will also help to suppress speculation.

The Government accepts that the Whitbread v Macdonald loophole needs to be closed—members are aware of the irony in that.

A number of issues that the committee of inquiry on the future of crofting did not highlight have emerged during the course of the bill, such as the use of stated case in appeals and the status of the commission as a tribunal. We are considering those issues. There is no doubt in my mind that the principles of the bill are sound. However, the debate continues and we continue to consult stakeholders. I met a range of stakeholders as recently as last week.

11:00

The Convener: Thank you. You said that absenteeism and neglect are two main concerns, which is what we have found from evidence that was taken in the crofting counties. Some crofters think that acting against absenteeism is the priority, whereas others think that neglect of the land is the priority. There is a dilemma in that regard. You said that both issues are equally important. Is it possible to reflect that in the bill?

Roseanna Cunningham: Both issues are equally important in the context of all crofting legislation. The foundation of crofting legislation is, in effect, about people being resident as well as working the land. Therefore, in one sense what we are saying is not new, but is what I think most people would consider to be a pretty fundamental principle of crofting.

Over the years, there has been a drift towards increasing absenteeism in some areas—in some parts of the crofting counties absenteeism is quite high. Neglect of the land is often allied to that. The two issues do not necessarily go hand in hand, but we find that in most areas in which there is a high level of absenteeism there is likely also to be a fairly high level of neglect. Therefore, the two issues are linked.

There are two aspects to the principles of crofting: working the land and maintaining the crofting communities, which requires people to be there. If absenteeism were taken to an extreme, we could end up with a situation in which one crofter was the registered crofter for virtually every croft in an area, and a whole community would, in effect, be killed. In some communities in the crofting counties there are serious concerns about the number of crofts that are lying empty, because that impacts not just on issues to do with working the land, but on the community's future. Communities need people if they are to retain schools, health services and all the rest of it. It is vital for the wider community interest that we tackle absenteeism and neglect, which go hand in hand, even if they are not lockstepped.

John Scott: Which is more vital—the communities or the working of the land? In my view, it should be the communities.

Roseanna Cunningham: I suppose that if we consider the issue from the outside, without taking on board issues of crofting per se, we can see that ensuring that we have sustainable communities is the most important issue that faces not just the crofting counties but a huge part of rural Scotland. In the crofting counties, crofting legislation is part and parcel of many communities, so the way in which the legislation works in respect of absenteeism and working the land relates directly to communities' sustainability. I probably agree that the sustainability of communities is the more important issue—in a telescoped-out, more objective sense—but in crofting counties we deal directly with the impact of crofting legislation on sustainability. Working the land can be just as important for the sustainability of communities as crofters' residence and the number of people who are in the community.

The Convener: We can drill down into absenteeism and neglect later. Do members have any questions on the main principles?

Liam McArthur: As the convener pointed out, the only consistent thing about the evidence that we have heard on our travels is that the message has been fairly inconsistent. In Shetland, absenteeism and neglect are not seen as a problem at all. In Caithness and Sutherland, it was hard to raise questions about absenteeism, because everybody wanted to talk about neglect. One striking point that came through was that what keeps people in communities is often nothing to do with crofting legislation, but is more to do with economic development in communities or alongside them. For example, in Caithness and Sutherland, there is Dounreay, and Shetland has fish farming and the Sullom Voe terminal. Keeping the population in those communities might be as much to do with wider economic development as it is to do with changes that can be made through the bill. Is that a fair assessment?

Roseanna Cunningham: I will not contradict that, as there will always be wider factors at play. One could argue that that has been the case at any point in the history of crofting, because crofting was never meant to be a main source of income. Right from the beginning of the idea of legislating for crofting, it was never in the minds of legislators that crofting would be the sole source of income. Therefore, wider economic development has always been necessary and vital. In that sense, nothing has hugely changed.

In many areas, there is a lot of seasonal employment. Economic development is important, but the fact that we all accept that crofting is not meant to be the sole source of income or the only

mechanism for supporting families does not take away from its importance as part of overall economic development. Crofting gives people the capacity to earn income independently of other things, such as those that the member mentioned. The two aspects have never been set against each other—we have always accepted that wider economic development is important because, right from the start, crofting was not meant to be the principal source of income for any household.

There is a continuing demand for crofts: I presume that the committee has spoken to people who are desperate to become crofters. The issue is not that nobody wants to live in those areas and to take on the crofts that they see are empty. The issue is that, at present, we have not developed proper mechanisms for ensuring a greater likelihood of that coming about.

Wider economic development and crofting go hand in hand. I guess that it will always be a bit of a chicken-and-egg question. If we were to remove crofting from an economy, we would remove from many people something that is pretty important to their household income, although it might not be the sole source of income. Nobody suggests that we should remove crofting. Crofting fits into wider economic development and is not separate from it. In a sense, it is part of it.

Liam McArthur: We certainly have not heard evidence that we should abolish crofting, although John Scott raised questions on that with the bill team earlier in the process. We have picked up that there is demand that is not being met, but we have also heard evidence that there are absentee crofters who might be working several crofts and who are managing the land that is sustaining communities in which people do not necessarily engage directly in crofting. We have also heard of cases in which occupiers of crofts neglect the land that others could work. The parity of esteem between absenteeism and neglect is difficult to square. That message has come through fairly clearly.

Roseanna Cunningham: Yes—but we are not saying that somebody who is resident and who completely neglects their croft will not be spoken to about their plans. It is not one or the other. We are not saying that someone who is not an absentee will never neglect their land because to say that would be patently absurd. We accept that, in some cases, people who might not be classified as absentees are not working the land. That is why the two things are important and go hand in hand.

In the areas where there is a high level of absenteeism, there is also a high level of neglect; there are some good examples of communities in which that is the case. Absentees can be absent for good reasons, which is why the bill contains

provisions to ensure that people are not unreasonably treated as absentees. There will be many times in people's lives when it might be necessary for them to become an absentee. All we are asking is that a person who has to become an absentee comes to an agreement about that with the commission and makes arrangements so that the croft is not just left doing absolutely nothing. That is not unreasonable, but is, in truth, in keeping with what crofting was always meant to be all about, right from the founding principles in the original crofting legislation.

I doubt whether the original legislators envisaged a situation in which vast tracts of the Highlands would be empty because of high levels of absenteeism. Much of the impetus behind that legislation was a desire to reverse depopulation, so it would be ironic if we were to allow crofting to become one of the problems in that regard rather than one of the solutions. Crofting is an important part of maintaining population levels in the crofting counties.

Elaine Murray: In your opening statement, you said that the intention of the legislation is to reverse the decline in crofting. In your opinion, are absenteeism and neglect the causes of the decline in crofting or are they caused by the decline in crofting? Obviously, there are other issues, such as the financial viability of crofting, the support that is available, the availability of other employment outside the crofting communities and so on. In drafting the legislation, has the assumption been that addressing absenteeism and neglect will reverse the decline in crofting? If so, do you think that that might be treating the symptoms rather than the cause?

Roseanna Cunningham: I am too wary to be drawn into making an absolute statement with a 100 per cent guarantee of anything being the case. In our view, the bill will contribute hugely to turning around the decline. It will do so because, as we already know, there are people who are desperate to get into crofting but are unable to do so because they cannot find somewhere to work, despite the fact that there are empty crofts. If there were no people who wanted to get on the crofting ladder, I would say that the concern that the bill will have no impact might be more justified, but the bill will begin to open the doors to some of the people who desperately want to get into crofting, which is important. Of course, a piece of legislation is not a magic bullet. However, the provisions in the bill have to be in place before we can bring about a reversal of the trend that has been evident in the crofting counties.

I think that you have all seen the Camuscross report, which gives a prime example of a situation in which there are vacant crofts and people who are desperate to become crofters. We have to find

a way of ensuring that such people can get into the vacant crofts. That is what the bill is about. It is also about the need to strengthen communities.

Other things are going on, such as crofting estate transfers, which are also part and parcel of our efforts. The bill is not the sole repository of the things that can make a difference, but it is an important element.

11:15

The Convener: John, you wanted to speak.

John Scott: I seek a point of clarification from Liam McArthur. I might have misheard you—did you say that I wanted to abolish crofting altogether?

Liam McArthur: No—not at all. I suggested that, on the extent of the crofting counties, you called into question whether the system is working, but we have not heard evidence from anybody that crofting should be abolished.

John Scott: For the avoidance of doubt—because it could have been inferred somehow that I wish to abolish crofting, notwithstanding what Liam McArthur has just said—I put it clearly on record that I have absolutely no desire to abolish crofting. I want to see crofting work a great deal better than it has in the past, particularly in the crofting counties.

Liam McArthur: In that, you have the support of the entire committee.

The Convener: That said, can we move on? We have lots of questions for the minister.

Peter Peacock: I want to ask about the election system to which the minister referred earlier. As we have gone round the country, we have heard evidence about the importance of the assessor network. Although we heard some contradictory evidence—in some places, people could not name their assessor—for the most part they could name them and the assessors are highly respected individuals. Indeed, we were accompanied in our visits by a number of assessors, whose knowledge added considerably to our understanding of the areas.

The argument has been made that we should include provisions in the bill to strengthen the assessor network and the election process for assessors, and that thereafter the assessors should elect the commission—in other words, the commission members should come from the elected body of assessors. That would be an alternative way of democratising the commission. If we had the same number as at present, it would give us 80 directly elected assessors, from which six or seven—or whatever the number is—could be drawn to go on to the commission. Have you

considered options other than the straight franchise that is currently being talked about? If so, have you considered that proposition?

Roseanna Cunningham: Obviously, when the proposals were in the planning stages, all potential options were considered. As you know, our initial proposal in the original consultation on the draft bill was for a different set-up altogether—we were looking at local area boards. Therefore, we have considered different ways of working.

I have certainly been aware of the idea that the board should be formed from the pool of assessors. However, I would take a step back from that to say that, if I were looking at that system from the outside, I would say that it did not provide the direct accountability to the voter that is required if we are to introduce a truly democratic process into the Crofters Commission. We would be taking the commission another stage away from crofters. That is one aspect.

I would be concerned also that the commission could end up being cliquey if we followed that proposal and took it away from the direct vote. I feel that, if we are talking about making the commission more democratic and accountable, that has to be done directly through the voter rather than at one remove. In our view, the board's being drawn from the pool of assessors would not really deliver the democratic accountability that we envisaged for the commission.

Peter Peacock: Nonetheless, it would be a step forward from where we are right now.

Roseanna Cunningham: It would be a step forward from where we are, but it would not be the other step that is required. The danger is that we might introduce into the system something that would be unfortunate—the possibility that the commission might end up being cliquey. If we are going to have democracy and accountability, we should just do it. What is to be gained by not doing it—by not trusting crofters to make the decision when they go to the ballot box?

Peter Peacock: Okay. A second point that has come out in evidence—

Roseanna Cunningham: The other point that I should make is that assessors can stand for election; they are not barred from doing that.

Peter Peacock: Sure. We have heard contradictory evidence on another issue. You have said that direct elections to the commission should take place and that the commission should then appoint its chairperson from within the board. We have also heard the view that ministers should appoint the chair because, ultimately, the commission—notwithstanding that it will be democratically elected—is accountable to

Parliament. What is your current position on the appointment of the chair?

Roseanna Cunningham: The current position of the Government is that the minister should appoint the chair. I accept that there is debate on the matter and that there is no unanimity—indeed, I would be surprised to find unanimity on any aspect of crofting in the committee evidence taking. There will always be arguments for and against. There is nothing to prevent me from appointing as chair either an elected or a non-elected commissioner. Whoever the minister is, they will not be bound to pick only from ministerial appointees; they will be able to pick an elected commissioner. It could well be that an elected member ends up as the chair, or not. The best person to act as chair is always a matter of judgment. We do not know the pool of people until the elections are over. The minister has to have a good relationship with the chair. The relationship is important, given the nature of the commission's work. I think that I am right in saying that that is also the view of the current chair of the commission.

Peter Peacock: That is the case.

I return to the direct election process. It is fair to say that we have not uncovered a great deal of enthusiasm for elections. They are not top of crofters' priority list; crofters just want to get on with what they are doing. My concern is that a poor turnout for the first commission election would damage the credibility of the commission. Are you concerned about that and, if so, could you do anything to help?

Roseanna Cunningham: Poor turnout affects the credibility of any election. Any individual who stands for election hopes to be elected on the basis of the highest possible turnout, on the highest percentage of the vote. Elections for the commission will be no different. Particularly for the first election, we will need to ensure clear understanding of the meaning of the election. Some work will need to be done in the crofting communities in that regard. Crofters expressed a desire for a greater degree of democracy and accountability in the commission. Having responded to that desire, it would be contradictory for us not to deliver it by way of elections. Community buyouts generate enormous interest—we have seen huge turnouts. We could get something of the same for the commission elections. Will turnout be 100 per cent? Probably not.

Peter Peacock: There is a difference between community buyouts and elections. A great deal of momentum builds before the ballot on a buyout. People have not been rushing to tell the committee that electing the commission is the most important thing for crofting. Alasdair Morgan

and I jointly chaired a group as part of the public meeting that we held on the Uists. Alasdair asked, "How many people would like an election?" There were about 15 people in the group and only one hand went up. I accept that turnouts vary—turnout in local government and Parliament elections can be only about 50 per cent—but a turnout of only 20 per cent or so would not be a propitious start for the system. That is my concern.

Roseanna Cunningham: We will have to put effort into ensuring that we maximise turnout. Turnout will also depend on the vigour of the election process and the people who come forward to stand for election. As you know, nothing is more likely to generate a high turnout than a little debate and controversy in the community, and everything that I have seen of the crofting communities suggests that their capacity to generate debate and controversy is quite high. Unless only one person stands in a chosen constituency, which I guess will not be the case, there will be debate. Turnout is always higher in elections when a significant debate is going on, and that is what we hope to generate in the crofting counties.

After Shucksmith, greater democracy and accountability were requested. During the past couple of years, there seems to have been a call for that, which has subsequently somehow been contradicted, but the analysis of responses to the consultation—our consultation, not Shucksmith's—suggests that many people are very much in favour of elections. The proof of the pudding will be in the eating. The Government will do everything that it can to maximise turnout.

Peter Peacock: I am glad to hear that you will welcome controversial candidates. I presume that you will welcome, for example, candidates who stand on a platform of no charges or fees for crofters as a result of the bill.

Roseanna Cunningham: People may stand on whatever platform they choose. I cannot dictate the personal manifestos of individual candidates. I anticipate that people who stand for election will put forward many interesting and—given the nature of the crofting counties—utterly contradictory positions. We will be in the hands of the voters, as we always are in elections.

It is the easiest thing in the world for Government just to say, "Well, actually, we won't bother with this business of democracy; we will hang on to everything ourselves." It is more radical to ensure that people's views are taken into account. Allowing people to vote when there are arguments and debates is a good way of doing that.

Alasdair Morgan: I suspect that if I had asked the people at the meeting in the Uists how many of

them did not want elections, there would have again been only one hand put up. I would love to have the opportunity to go back and put that question. I simply ask the minister to reflect on the remarks of a lady politician who went on to become the first female Secretary of State for Scotland. She attributed the low turnout in a particular by-election to voters' contentment with Government policy.

Roseanna Cunningham: I have never found that view hugely convincing. I remember that the comments of the lady politician in question were quickly given a raspberry by most people, who know that low turnout is not a good sign. We are grappling with low turnouts across the board; any election has the capacity to deliver a low turnout. There have been by-elections in which turnout was catastrophically low, but that did not invalidate the members who were elected. We do not count the people who do not vote, although we cannot escape the responsibility to question why people are not voting. That is why it will be important to ensure that we do what we can to engender a sense that elections to the commission are an important part of development in the crofting counties. We must get that across to potential voters.

11:30

Karen Gillon: I shall resist the temptation to get involved in debates about what certain politicians did or did not say, but I will remind members of the subsequent general election result.

On the election process, Roseanna—or minister, or whatever I am supposed to call you these days—

Roseanna Cunningham: You can call me Roseanna.

Karen Gillon: Can you talk us through why the Government has come to the conclusions that it has on the number of constituencies and on how those constituencies will be made up? I notice your officials raising their eyes to the sky because I appear to have been obsessed by this issue since day one.

Roseanna Cunningham: No, not at all. There is a fairly healthy debate—on this side of the desk as well—about how one draws the line in creating the constituencies. In effect, we are talking about the establishment of six wards. Geographically, by definition, those will be big wards because we are dealing with a huge area.

There are two ways of making the cut. One way would be just to look at the geography. The wards would then be: Orkney and Shetland, which would be put together because they are often put together; the Western Isles, which is seen as one

kind of thing; the northern Highlands, which would mean Caithness and Sutherland; the southern Highlands, which would include Ross-shire, Inverness, Badenoch and Strathspey and Moray; Skye, Lochalsh and Lochaber; and Argyll, Bute, Arran and Cumbrae.

Another way—which, for these elections, might be a more attractive approach—would be to look at crofting type. From going round speaking to crofters, we know that crofts in Sutherland, for example, are very small by comparison with crofts elsewhere in the crofting counties and that there are different sizes of crofts, different historical patterns and different problems and so on. We heard mention of absenteeism not being a huge issue in Shetland—although that does not mean that the problem does not exist there—but there are other areas where absenteeism is a much bigger issue. Therefore, another option would be to develop the six wards on the basis of crofting type. That would result in a whole different set-up: Shetland would be a ward on its own; Orkney and Caithness would be treated as a single ward; the east Highlands, which would include east Sutherland, Easter Ross, east Inverness and Moray, would be treated as one ward; the Western Isles would still maintain its single-ward status; the west Highlands, which would include west Sutherland, Wester Ross, Skye and Lochalsh, would be one ward; and the south-west Highlands—Lochaber, Argyll, Bute, Arran, Cumbrae and the small isles—would be another ward.

Those two sets of proposals derive from two different ways of looking at the issue. We have not made a final decision on the matter. Our feeling is that, given the nature of these elections, it might be more sensible to do things more by crofting type because the commissioner who was elected could then represent an area that was more cohesive in terms of crofting type. However, I fully accept that many people might be outraged if they were somehow put into a ward with other parts of the Highlands with which they did not think they had much in common. Our feeling, I guess, is that doing things by crofting type might be the better option, but we have not made a final decision. In fact, I would be interested in hearing the committee's views on the issue. Basically, there are two different ways of looking at the basis on which the wards system might be developed.

Karen Gillon: It is helpful to have that set out. We will no doubt want to reflect on that issue at some point. Certainly, in some of the discussions that we had in different parts of the country, people were concerned that the solutions in some provisions of the bill might have an adverse impact on their kind of crofting. Therefore, perhaps—I do not know, as I have not really thought this

through—using crofting type might allow for that kind of debate to take place.

How many terms of office will an elected commissioner be allowed to serve? Will there be a limit, or will people be able to go on ad infinitum?

Roseanna Cunningham: We have not set a limit, nor do we have a limit in mind, for the term of office, any more than a limit has been set on the length of time for which any of us, or a councillor, can serve. I am not sure that there would be great benefit in reducing the term of office or in confining the ability to hold office to a set number of terms.

We have not thought in those terms, as in most elections the issue is whether the voters are happy to re-elect someone rather than whether an outside body says that that person can serve only two terms.

However, I am aware that some fairly significant world figures are confined to a certain number of terms. I do not want to say that an elected member of the crofting commission would be in the same position as the President of the United States, but I note that a restriction on the number of terms for which people can stand for election is part and parcel of the system in some polities. Traditionally, it has not been an issue for us—there are issues around disqualification, but that is a slightly different matter. As we are going down the route of open as opposed to indirect elections, we feel that it is for the voters to decide on how long they want somebody to remain in office as their elected representative.

Term limits might be more of an issue if the representatives were elected from within the assessor pool. We would not want the board to consist of a self-perpetuating group of individuals, so we would perhaps consider limits in that case. However, we have gone down the direct elections road instead, and the tradition in this country, in the main, is that in a system of direct elections it is up to the voters to decide how many terms they elect somebody to serve.

Karen Gillon: The issue of whether landlords should be represented on the commission has been raised. Do you have a view on that?

Roseanna Cunningham: I understand that request. I remind people that not all the commissioners will be elected—some will be appointed by me, for example—so there is a degree of certainty that a landlord will serve on the board. There are, as we know, different types of landlords in the Highlands and Islands, so I would not want to give a commitment with regard to which type of landlord we want to appear on the board. I remind everybody that the Government itself is a fairly significant landlord.

Karen Gillon: Obviously there will be no non-domiciled taxpayers on the board.

Roseanna Cunningham: No.

Karen Gillon: I will move on to the question of who should be eligible to vote, which is a slightly more controversial element of the proposed election system. I was a little disheartened on reading the paper from the officials, which suggests in the final paragraph on page 2 that there is a gender imbalance within crofting. Our experience, from travelling around the country, is that many women are involved in crofting. They may not be the registered crofter but, because of the economic situation, they may be the person who is actually doing the crofting. There is concern that the election system as outlined in the bill will not comply with equal opportunities policy, because it will be very much skewed towards male representation, despite the fact that so many women are actively involved in crofting.

I am slightly concerned that the response from officials states:

“The gender imbalance lies within crofting itself”.

I do not think that that is the case; we perhaps need to reconsider the issue, which has been raised with the committee a number of times in evidence.

Roseanna Cunningham: I am conscious of the debate on the issue, and I have read and listened to some of the evidence. My understanding is that around a third of registered crofters are women, so the situation is perhaps not as bad as it was initially thought to be.

The difficulty, assuming that the franchise will be based on crofters, is that it is the make-up of the crofters, rather than the franchise, that is the problem—if we view it as a problem. I guess that that pretty much went under the radar until we began to look at who is eligible to vote. We have considered how we would fix that. The difficulty is that if we start trying to introduce gender balance via the franchise, we might end up creating more problems than we cure. We might extend the franchise beyond the registered crofter to the crofter's partner, who might or might not be working the croft, but there is no guarantee that the partner will be female—they might be the male partner of a female registered crofter or indeed we might be talking about people who are cohabiting. Extending the franchise would not necessarily fix the gender imbalance.

If we extended the franchise to the crofter's partner, we would in effect be delivering two votes for some crofts but only one vote for sole crofters. If we extended the franchise to family members, who could be argued to have an interest in crofting because they might inherit the croft, we would

skew that even further. There would still be no guarantee that we would achieve gender balance, unless we said that we would allow only the female children to vote.

The difficulty is that almost any fix that we put in to sort that out would create its own set of problems. One argument might be that we could just open up the franchise to absolutely everybody in the crofting community, but there are crofting communities where things happen in a different way and there might be considerable unhappiness among crofters that non-crofters would have a say in something in which they are not involved. The ways of trying to fix the gender imbalance would not necessarily work—because we could not guarantee that we could get anywhere near a gender balance—and would in themselves create even more problems, which we would then have to try to fix. We would never get to the end of it.

We went back to the beginning and decided that the only way to proceed was to say that only the registered crofter would have the franchise. The registered crofter might or might not be a woman, but it is important that the registered crofter has the franchise.

Karen Gillon: One of the other solutions that were put to us in evidence was that each croft household would get a single vote, regardless of how many people were in it. Has that option been considered? Would you be prepared to consider it?

Roseanna Cunningham: We can certainly look at it. My immediate reaction—this is obviously a superficial reaction—is that I do not really see how that would solve the problem, because we would still have no guarantee that we would achieve gender balance. If the consensus in the household is that the registered crofter would vote, we would be right back where we started. In that situation, I do not think that we could dictate who in the household would vote, so we would not achieve gender balance anyway.

Karen Gillon: The other issue is who can stand for election. At the moment, only the registered crofter can do so. We had a bit of debate about that. If we are saying that only the registered crofter can vote and only the registered crofter can stand, we are limiting who is able to participate. If, however, we allowed anyone in the crofting counties to stand but only allowed registered crofters to vote, that might provide a wider pool of people who could be on the board—although only those with a direct interest would be able to participate in the election. Mrs Smith might not be the registered crofter but she might be well known in the crofting community and the crofters might vote for her. Equally, Mr Smith might not be the registered crofter but might be eligible to be

elected. That would leave the choice up to the electors and not to anyone else.

11:45

Roseanna Cunningham: We come back to the view that, as the commission regulates crofting, crofters should be in the driving seat. However, I hear what you say. Situations can be envisaged in which crofters might decide collectively that their representative should not be a crofter, although I find that unlikely—such a candidate would have to overcome a burden of presumption in voters' eyes.

Karen Gillon: I am suggesting that a representative might be a crofter but not a registered crofter.

Roseanna Cunningham: We can certainly consider that again. The commission is about crofting and crofters. The registered crofter is the basis on which the crofting system works. Given that the registered crofter's name appears on everything and that registered crofters make decisions on matters such as subletting, crofters should be in the driving seat in the commission. However, we can examine that again and think about whether some way of achieving what is suggested might be possible. I cannot give a definitive answer at the moment.

Karen Gillon: You will know that the Subordinate Legislation Committee suggests that the franchise should be specified in the bill, so that everybody knows who is who and what is what. That is a fair position. Have you considered that further?

Roseanna Cunningham: We will lodge a stage 2 amendment to deal with some of the Subordinate Legislation Committee's proposals, but I am not sure whether we will go into the level of detail of putting the franchise in the bill.

Putting such provisions in a bill has dangers; for example, it makes changes difficult. When the system is up and working, we might wish to make changes in the light of experience, so we would not want to be caught. For example, if the decision were made to go with just registered crofters and that were specified in the bill rather than in regulations, the difficulty is that that would have to be revisited in further primary legislation. Ditto for whatever voting system is decided on—that could be in the bill, but things might change down the line. The various voting systems are in flux. Such detail is more suited to regulations than the bill. That is always a balancing act.

Karen Gillon: Do you have a preferred voting method?

Roseanna Cunningham: We have a healthy debate going on about the preferred voting method. In truth, that is another issue on which it

would be useful to have feedback from the committee. The single transferable vote is not appropriate, because the wards will be single member. The debate is between the alternative vote and the first-past-the-post system. As we know, a bit of debate and consultation are going on elsewhere about the issue.

We are mindful of the Electoral Commission's request that, in so far as is possible, we try to minimise the number of voting systems that are in play. Our difficulty is that we are a little uncertain about what all the voting systems might be in the future. We are discussing that, so any views from the committee would be gratefully received.

Karen Gillon: I assume that the debate is about whether to use AV. I understand that STV is used in council by-elections for a single seat.

Alasdair Morgan: Which is AV.

Karen Gillon: Which is AV, in effect.

So the debate is about whether to use a proportional or first-past-the-post system.

The Convener: I am sure that the committee will have a healthy debate on that when we come to discuss it.

Roseanna Cunningham: Yes. There is a danger of getting bogged down in discussing voting systems.

The Convener: We will move on. Did Liam McArthur have a point to make on what Karen Gillon said?

Liam McArthur: No, but having heard what the minister said about a healthy debate and controversy within the crofting community, I think that it might be helpful to return to the issue of whether the minister should appoint the chair of the commission, or whether it should emerge from a consensus within the commission. I might be convinced that there might be more merit in getting the commissioners to agree that among themselves rather than the minister making the appointment.

Roseanna Cunningham: That argument could certainly be made.

Liam McArthur: The minister might want to reflect on that.

My question is about the commission's workload. Evidence suggests that everyone has some criticism of the commission, but no one seems to want to abolish it. Andrew Thin from Scottish Natural Heritage suggested that part of the reason for the criticism might be that the commission is not always resourced and skilled enough to do the things that it is asked to do. He made the point that the bill will certainly mean an increase in the commission's workload, because it

will be required to check records for the register, chase absentees and pursue issues of neglect. It would be helpful to know whether you believe that the commission will be properly resourced under the bill as it stands, or whether you are alive to the increased workload and will take steps to address it.

Roseanna Cunningham: We are obviously alert to the possibility, but that is not to say that it is anything more than any Government would have to consider at any stage in respect of any agency, non-departmental public body or whatever.

We have already removed some of the commission's workload in transferring the development function to Highlands and Islands Enterprise. We did not cut staff or resource, because we knew that some of the spare capacity that would be delivered as a result of the removal of the development function would be filled by a renewed focus on the regulatory function. At the moment, we are not of the view that delivering the workload will be beyond the commission's capacity. However, we will always have to keep that under review and we are very mindful of it. I remind you that we also provided the commission with £100,000 in extra resources to tackle absenteeism. Where we are imposing a specific duty on the commission, we are also giving it the resources to deal with it.

Liam McArthur: I presume that Andrew Thin would have been aware of the shift in development function and the additional resource for absenteeism when he made his points to the committee. Another point that was made was that the trigger mechanism, and the way in which the mapping registration system would work, will be expensive and drawn out; Registers of Scotland seemed to corroborate that this morning. Some of what the crofters might want and expect to be done with regard to the chasing of absentees or dealing with neglect might be beyond what ministers anticipate under the bill. It is not clear whether that is an issue of raised expectations or whether there is a mismatch between the functions that have been removed from the commission and those that will be added. However, there is a clear message that resources will not match the requirements under the bill.

Roseanna Cunningham: I would expect to hear that—in all the meetings that I have, virtually every organisation is conscious of the current challenging financial climate and is therefore keen to ensure that whatever else happens, and wherever any efficiencies or cuts take place, it does not affect them. That is understandable.

You are asking me something that no one can answer. You heard from the keeper that we are talking about the period from 2012 onwards for the

registers. The commission is already considering absenteeism, and we have given it extra resources to do that. Some of the potential issues that you mention will not arise until a considerable number of years into the future, so it is difficult for me to say right now precisely what the impact might be. However, our view is that it will not be great. The commission is reviewing the efficiency of its processes. We are of the view that many of the procedures under the bill will basically run in tandem with current procedures, so they will not add a huge extra burden.

Given that the commission has been given extra money to deal with the work that we wanted it to do on absenteeism; that we believe that in practice the provisions in the bill, such as those on the register, will not add a huge burden to the commission; and that, in some cases, the flow through from the bill will not occur for a good couple of years, it is impossible for me to say right now that we will give the commission an extra whatever next year. We will not really be required to do that and nor would it particularly help.

The Government as a whole continually makes judgments about whether the resources that we allocate are sufficient to allow agencies or bodies to do the work that is required of them. That judgment is constantly under review. In that sense, the commission's situation is no different from that of any other organisation. We will maintain a constant review and, when we think it necessary, we are prepared to consider providing extra resources to deal with issues, as we have done with the absenteeism campaign. We are not blind to the possibility of that necessity coming about at certain points, and we are prepared to consider providing extra resources when it happens.

Elaine Murray: Section 2(2) inserts various provisions into the Crofters (Scotland) Act 1993, including one that gives ministers the power by order to confer, remove or modify the functions of the commission. You referred to the fact that the development function has been transferred from the commission to Highlands and Islands Enterprise. Are you taking those powers because there are other functions that you are considering adding to or removing from the commission?

Roseanna Cunningham: That transfer has already happened, and I think that we have no specific current plans on anything else and that nothing is envisaged.

Elaine Murray: There is a slight concern that, if functions were to be removed by order, that would not give much opportunity for comment. The argument is similar to some of those on the Public Services Reform (Scotland) Bill. There is less opportunity for comment and discussion when such changes are made by order, rather than through primary legislation.

Roseanna Cunningham: I agree that that point is caught up in that bigger debate on the Public Services Reform (Scotland) Bill. I am not sure that what we are doing is as dramatic as people think. At a certain point, it was intended to try to consolidate crofting legislation. We are thinking more about pre-consolidation issues, rather than the substantive issues that people might have in their heads. The thrust of the bill in respect of the commission is to focus it on regulation. That having been achieved, there really will not be much else other than regulation. That is the purpose. If we were to remove the substantive regulation role at some point, that would I presume be in the context of a discussion about the commission as a whole, rather than any changes under an order under section 2(2). That is not the kind of thing that I envisage.

12:00

Elaine Murray: You would also be able to add to the commission's functions.

Roseanna Cunningham: Absolutely. The same argument always arises when such provisions are included in pieces of legislation, but they simply mean that the primary legislation does not need to be opened up every time that an attempt is made to do something that is not necessarily included in the bill. That is why our system includes subordinate legislation in the first place.

We do not envisage removing any further powers from the commission, for example, because we think that the bill achieves our intention for the commission. Elaine Murray is right to say that it might be decided in the future that the commission's functions should be added to, but we have nothing in mind in that regard, either. At the moment, there is simply a reserve power to enable the commission's functions to be dealt with without the primary legislation having to be opened up. I suspect that, if we ended up having too many things that we would have to open up the legislation to do, they would often simply not get done. That happens with successive Governments, of course, and that is why legislation often looks a bit clunky and creaky. Introducing effective amendment bills is simply too big a hassle.

John Scott: I want to take you back to a question that Liam McArthur asked. I am concerned about creeping costs and growing bureaucracy, and I am not sure whether you are saying that you will or will not provide funding. Another, unkind, way of summarising what you have said might be that you will give a blank cheque. Does the bill's financial memorandum cover additional amounts, such as the £100,000 that you have just announced? Will you issue a new financial memorandum? How binding is the

current financial memorandum with respect to costs?

Roseanna Cunningham: The £100,000 that we gave to the Crofters Commission in January, which relates to the absenteeism initiative, is not directly connected to the bill. We would have wanted that to happen anyway. The money was not consequent on the bill, otherwise we would have needed to wait. We asked the commission to do something and gave it extra resources to do that, but that is not an issue for the financial memorandum. In our view, no changes require to be made to the financial memorandum. The £100,000 is not connected to it. I used that example simply to point out that, when we specifically task the commission to do something within a challenging timescale, for instance, we are prepared to resource it when we can find the resources to do so, and that will always be the case.

Peter Peacock: On the budget, I want to pick up on the issue of charges for regulation. As you are well aware, and as we have heard in the evidence that has been given, the crofting system is heavily regulated by the state and the will of successive Parliaments down the ages. In that context, is there any case at all for charging crofters for something that the state and successive Parliaments have required them to do in the interest of gaining public goods?

Roseanna Cunningham: I suppose that one should expect that any issue relating to charges will create controversy. We are considering whether the charges should apply only where a beneficial interest to crofters accrues from what has been done. We have not yet made a decision about which of the regulatory applications might incur a charge, which is why we are open to discussion about that. We do not see that there should be any great controversy about a charge where the crofter will get a significant financial benefit from whatever is being done—for example, decrofting. However, we have not come to a final view on exactly what ought and ought not to be charged, nor have we decided on any likely level of charges.

I am prepared to ensure that before the bill completes its parliamentary stages, greater detail will be offered to allow people to understand which regulatory applications might incur a charge and roughly what the charges will be. We do not expect the bill to reach its final stages without that information being there.

Peter Peacock: But it is your intention that there shall be charges.

Roseanna Cunningham: Yes, we are looking at that. We do not think that it is an inappropriate thing to do. Lots of different agencies charge for

the things that they do. We are looking carefully at trying to ensure that we have a regime that does not impact heavily on those who are least able to pay the charges.

Peter Peacock: I guess that that will be quite difficult. Let us take the decrofting application example that you used—just because someone decrofts a bit of land, it does not necessarily mean that they will make a financial gain. Only if they decrofted land for a house site and then subsequently disposed of the house might they make a gain. Notionally they might have gained some value, but they would not have the cash in their hand or pocket. In a case of speculation in decrofting, somebody might make a bit of money, but that cannot be determined in advance. That will be immensely complex, will it not?

Roseanna Cunningham: In drawing up a schedule of charging, we would have to be careful that we had a clear view of what would trigger a charge and what would not. I do not shy away from the fact that that might be viewed as complex in some cases, but we would try to make it as simple as possible. I return to the point that most agencies charge for what they do, which is not a particularly controversial thing in and of itself; it is controversial in this context only because it has not happened before.

Peter Peacock: Linking the charges to the budget, the Finance Committee has said that it is sceptical about the claims in the financial memorandum that the commission will not incur any additional cost as a result of the bill. We have had evidence from the commission, however, that said that if more work is required as a consequence of the bill, more cash will be required to do that or less current work will require to be done in order to accommodate that new work. Alternatively, you might have to elongate the timescales over which the current work is being done to keep the costs down. The worry is that if the new commission is effectively starting with a potential hidden deficit, there will be pressure to raise charges to fund that deficit. That would then add to crofters' anxiety about any charging regime.

Roseanna Cunningham: You have heard everything that I have said. We are not of the view that there will be any hidden deficit; we have already removed a significant portion of what the commission did, precisely because we wanted to focus all our efforts on regulation. When we removed the development function, there was no cut in staff numbers or reduction in the budget. We knew that we would ask the commission to do the work that will arise from the bill. I do not accept that there is any hidden deficit.

As I indicated, we have not made a final decision on which regulatory applications might incur a fee, what the fee level will be and how

such funds might be used. I have undertaken to ensure that the committee gets an indication of our thinking before the end of the bill process. You will know what we have in mind. Any financial calculations that have been made thus far were made on the basis of known quantities. In going forward, we are talking not about that but about balancing the budget. The two things are not linked.

Elaine Murray: Earlier, Peter Peacock raised questions on the role of assessors. He referred to the somewhat contradictory evidence that we have heard. The bill says not a lot about assessors other than that the commission can appoint them and reimburse their expenses. Perhaps the bill should say a bit more about the duties and powers of assessors. For example, there could be a duty or power on assessors to monitor neglect and absenteeism.

Roseanna Cunningham: Given that the bill neither touches on nor interferes with the assessors network, we saw no need for it to cover extensively the assessors' role. The bill does not impact on the network. In principle, there would be nothing wrong with putting something along those lines on the face of the bill except that it would add to the size of the bill and act as a restatement of what is already covered elsewhere. That said, my mind is not closed on the matter. The network works very well; it should remain in place. In framing the legislation, we saw no need to open up the question of assessors; the status quo was perfectly adequate. We could have put all sorts into the bill, but we decided to confine it to things that we want to change.

The Convener: Does any member have a further question on part 1?

Peter Peacock: Yes. When Michael Russell occupied the minister's chair, he moved the commission's development function to HIE. The bill makes formal provision for the removal of that function. We have heard a lot of evidence on community mapping. I will not cover that now; we will address it later. We have also heard ideas about community planning. I am thinking of the Camuscross report in which absenteeism and neglect, among other things, were identified along with a vision for the community. That is the sort of work that HIE deals with.

We have heard that the role of the current commission extends to mediation in a variety of ways. For example, the commission can help to broker an arrangement between a new entrant and an existing crofter to enable the entrant to get into crofting. The commission can also try to find community solutions to issues that might end up as regulatory problems if a solution is not found. For example, in the past, the commission has undertaken reorganisations of crofting

communities and runrig systems. It has done development work that has come close to regulatory activity and regulatory work that has come close to development-type activity. In light of that, it seems wise for the commission to keep at least some sort of development role, even if it is conducted in conjunction with HIE. If the commission's internal legal advice was that for it to do something entirely commonsense would be ultra vires, that would be unfortunate. Will you reconsider the removal of all development functions from the commission? That would ensure that it could continue to do the commonsense things that may, in future, be viewed more as development than regulatory work.

Roseanna Cunningham: If we were to go down that road, we would be likely to create considerable confusion. That hypothetical ultra vires issue would not be cured if we were to do that. Even if I were to accept your position, the potential for such hypothetical ultra vires situations would remain, regardless of where we drew the line. The commission will work with HIE and the local authorities. The idea is that all three will work together, but we want the commission to focus on regulation because most of the criticisms of it in the past have been that it has not performed its regulatory function as effectively as it might have done. We have accepted that that criticism must be addressed, and we have addressed it by working, in the past year to 18 months, along the lines that we proposed.

12:15

Peter Peacock: Is it your view that there is nothing in the bill that would prevent the commission from working with HIE or any other agency in the future in the interest of promoting crofting?

Roseanna Cunningham: Our expectation is that they will work together.

Peter Peacock: Would you be happy to make that explicit in the bill to empower them to do so?

Roseanna Cunningham: Why empower them to do something that they have the power to do anyway?

Peter Peacock: Would you make it explicitly clear that they could?

Roseanna Cunningham: The problem is that neither HIE nor the local authorities are under my ministerial remit and I do not know what future proposals there might be for them. If we put what you suggest in the bill, we might have a bill that referred to an organisation that did not exist.

Peter Peacock: I was thinking not necessarily of specifying an organisation, but of making it clear

that the commission was empowered to co-operate with and work with whatever agencies it felt appropriate to fulfil its objectives.

Roseanna Cunningham: That is a statement of the obvious. We could have a piece of legislation that was a mile long if we built in continual statements of the obvious. The people involved all know one another; they already talk to one another and work together. That will continue.

Peter Peacock: Are you completely satisfied that the removal of the commission's development function will do nothing to impede that in the future?

Roseanna Cunningham: I would have to have some specific example put to me of how joint working would be impeded.

Peter Peacock: That is fine.

Roseanna Cunningham: I can see nothing that would impede it. Ministers have to approve the commission's plan so, if any minister in my seat saw that the commission appeared to be drawing up a plan completely separately from anything else that may be going on in the Highlands and Islands, they would have something to say about that at that point. I am not sure that putting statements of the obvious into legislation is particularly helpful.

Peter Peacock: Okay.

I have a question on the penultimate paragraph on page 3 of the evidence that your officials gave us in response to a number of questions from earlier evidence. It concerns the plans that the new commissioners would create and says:

"The policies of the newly elected Commission would be set out in its plan, which would provide the framework for officials to take decisions in respect of regulatory applications."

I want to be clear about that. Officials may have delegated powers, but that statement implies that, in future, they—not commissioners—would make decisions on individual regulatory applications. The current system involves commissioners going out, having hearings and listening what to communities say about a particular regulatory application or dispute. The evidence that your officials provided implies that that might not be possible in the future. I look for an absolute assurance that that is not intended.

Roseanna Cunningham: I am sorry—I have been trying to find what you are talking about.

Peter Peacock: It is on page 3 of the correspondence from the Executive to the committee. Your page numbers may be different; I can give you the piece of paper if you wish.

Roseanna Cunningham: Is that the section where we say:

"The policies of the newly elected Commission would be set out in its plan, which would provide the framework for officials to take decisions in respect of regulatory applications"?

Peter Peacock: Exactly. I am trying to clarify that that statement does not imply that the Government's policy is that commissioners should no longer take decisions on regulatory applications or hold hearings in the process of doing so.

Roseanna Cunningham: No, no—we are not talking about officials making decisions about regulatory applications. Do you think that we are trying to put in place a system in which they will do that?

Peter Peacock: That is the implication of that sentence. I am trying to clarify that it is not the policy intention that commissioners would no longer make regulatory decisions and that such decisions would only be made by the commission's officials.

Roseanna Cunningham: I am having a slight difficulty following the question.

Iain Dewar (Scottish Government Rural Directorate): Let me clarify what was meant by the reply that I drafted in response to the questions that the committee sent to us after officials gave evidence. Many of the decisions that the commission takes are fairly routine, not controversial and fall within standard guidelines. Officials make recommendations on a lot of those cases, which the commissioners rubber stamp, in effect.

We propose that officials should be able to take decisions in respect of routine regulatory applications but only where commissioners have given them specific delegated authority. That is not something new. It is quite common in planning authorities, where officials can approve routine decisions. To return to trying to make the Crofters Commission more efficient, we simply propose—

Peter Peacock: That is fine. I just wanted to ensure that it was on the record that it was not the Government's intention to stop the commissioners themselves making decisions.

Roseanna Cunningham: No. I am sorry—I was confused because I was thinking of "officials" as being the ones who are with me and I could not quite understand why they would want to be involved in regulatory applications in the first place. I did not pick that up clearly.

The Convener: Right. We have only got as far as part 1 and we have been at this for an hour and a half. We have about the same number of questions again on the next three parts of the bill. Members of the committee need a comfort break—they have been at this for about two and a quarter hours—so I suspend the meeting for five

minutes. I ask that we all make an effort to get through the next set of questions and the other three parts of the bill a good deal more speedily than we have done so far.

12:22

Meeting suspended.

12:30

On resuming—

The Convener: We move on to the crofting register.

Bill Wilson: Minister, you have probably heard that we have had quite a debate about the advantages of having a map-based register. What are your views on the benefits of such a register?

Roseanna Cunningham: Your question takes me back to the history of the bill, which arose out of the work that was done in 2006. The idea of a map-based register was enthusiastically endorsed by crofters. The existence of a definitive register will bring a degree of certainty into the process, the benefits of which will be almost incalculable. For the first time in crofting, there will be certainty. The lack of certainty has led to endless disputes, some of which have gone on for generations, as I understand it. We hope that the register will provide a notional end point to such disputes. We will not end all disputes, but the certainty that the register brings will iron out many of the issues that have arisen in the past. The register will remove any doubts about the extent of croft land, and its benefits will become more and more obvious.

Liam McArthur: We heard from Registers of Scotland today that the map-based register will establish the extent and ownership of croft land and be of benefit in relation to aid and regulation. Registers of Scotland said that the register's existence will increase transparency and assist policy making. It struck some members that the focus was more on benefits to policy makers, regulators and landlords than on advantages for tenants. In light of the proportion of croft land that is tenanted, will you explain the benefits of a map-based register for the tenanted sector?

Also, the register will contain the names and addresses of croft tenants. Such information seems to be more in the purview of the commission and less relevant to Registers of Scotland. The approach throws up the potential for duplication. How do you anticipate that duplication will be avoided?

Roseanna Cunningham: Do you mean duplication between the register that is currently in the hands of the commission and the proposed new register?

Liam McArthur: I am talking about duplication of information that Registers of Scotland will be

required to hold and information that will more properly fall into the commission's remit.

Roseanna Cunningham: By definition, there will be some duplication of names and so on. It could be argued that there will be duplication of information that is held on the land register, too, but that will not negate the value of the crofting register. There are always bits and pieces of duplication when an interest is registered. I am not sure that that is a huge issue. I suppose that the issue arises in the context of the added value of the crofting register, as opposed to the administrative register that the commission holds. However, the commission's register does not provide the certainty that the new register will provide.

If everything that is in the commission's administrative register were simply to be transferred automatically to the crofting register, your argument might have greater force. However, that will not necessarily be the case. The crofting register will seek to provide a definitive set of data, given the legally binding nature of the registration process.

Liam McArthur: I appreciate that there might be some crossover in the information held. The Registers of Scotland articulated the benefits that might accrue to the landlord and those who wish to sell on croft land and the benefits of administrative transparency and clarity. However, I do not think that it set out terribly convincingly the benefits to the tenanted sector, which makes up such a large part of the crofting community.

Roseanna Cunningham: One would then have to assume that there are no disputes within the tenanted sector, which I do not think is an assumption that you could easily make. Secondly, a tenant can become an owner-occupier at any time. We are not talking about a set of people who are fixed for all time.

Liam McArthur: No, but we have heard sufficient evidence that the process might ignite disputes where none exist. That is not to suggest that there are not existing disputes.

Roseanna Cunningham: Tenants, like anybody else, will get certainty in respect of the extent of a croft and their interests and rights in it. The tenants will get that certainty in the same way that anybody else would once the registration process has taken place.

Liam McArthur: Some people in the tenanted sector asked us about the purpose of the process. There is no issue at the moment and the process might ignite problems with neighbouring crofts or within the crofting community.

Roseanna Cunningham: Issues might well arise. If the tenant decides to buy, that could be an

issue. As I said, we are not talking about a definitive group of people who will never change their position. Tenants do not necessarily just stay tenants for life. That is an important point. The process will give tenants some certainty. Iain Dewar has just passed me a note, but I cannot read it.

Certainty is a benefit that applies to everybody, regardless of whether they are landlords, owners or tenants. Tenants are as likely to be involved in disputes as anybody else. Things will not happen overnight, but the certainty of the register will help. Tenants might choose to change their status in relation to the croft. The certainty of the registration process will help that in the future. The certainty of the register is a key benefit, but it will work only if the register catches all crofts. If the neighbouring croft to a tenanted croft is owner occupied, the registration process will have an impact on the tenant anyway. I do not see how the implicit suggestion that tenants should somehow be left out of the process would work.

Liam McArthur: You seem to argue for a community-based mapping exercise.

The Convener: Perhaps we could move on.

Peter Peacock: I have struggled with this registration business from the word go. I have seen crofters shake their heads when we talk about it. They think that it will be a recipe for conflict in the short term and they do not, as individuals, see the need for it.

I suppose that we have heard two sets of evidence. When I have heard crofting organisations argue for a register in the past, it has been for the purpose of regulating crofting. We have heard evidence from Sir Crispin Agnew that the principal benefit would be to conveyancers and lawyers. We heard a bit of that this morning when we discussed ownership questions with the deputy keeper of the registers.

What is the purpose of the register? Is it principally to improve regulation, or is it to give certainty of title to land for other purposes?

Roseanna Cunningham: It is not for other purposes. It is to provide certainty about where tenure extends to. It is about certainty.

Peter Peacock: Yes, but is that certainty for the purpose of regulation by the commission?

Roseanna Cunningham: The certainty is as much for the crofters themselves. The register will attempt, over the period of a couple of generations, to iron out of the system the long-running disputes that can take place. I am not saying that the use of the register will be like waving a magic wand and—hey, presto—within two or three years all disputes will be gone. I openly accept that it will take some time for the

register to be fully implemented, as it does to get any register up and running.

The principal benefit is the absolute certainty that will be introduced. That is the important thing. We do not have an ulterior motive or ulterior benefit in mind, although the register will clearly assist in the future when tenants are deciding what they might or might not want to do—for example, decroft. The foundation of that certainty will bring benefits in other areas, too.

Peter Peacock: Let us move on. A good thing has come out of the consultation and our evidence taking. One of the few points of consensus, judging from what people have said everywhere we have gone and on all sides of the argument, notwithstanding the scepticism about the trigger mechanisms in the bill, is that a community-based approach to mapping might be the answer to all sorts of problems. People are strongly of that opinion. You have indicated this morning that you would be happy to support such an arrangement in some way. It is my understanding that the initiative that you have announced this morning would take place in tandem with the trigger system that is currently in the bill—it would not replace it. Could you clarify whether that is the case?

Roseanna Cunningham: Yes.

Peter Peacock: In other words, community mapping would go ahead, but the system as envisaged in the bill would also go ahead. Is that the thinking?

Roseanna Cunningham: Yes. Communities may agree about the mapping taking place and, if it is done in that manner, it will benefit everybody. However, that does not preclude individual choices about registration. I suspect that, in some communities, the first moves towards registration might trigger the idea that the community ought to be considering that across the board.

Peter Peacock: You say that a crofter might choose to register. That is the voluntary route.

Roseanna Cunningham: Yes.

Peter Peacock: The principal route under the bill is that seeking a regulatory decision of some sort would be a trigger. Whether someone wanted to be registered or not, they would have to register.

There is a provision whereby, if a whole estate is sold, every croft on the estate would have to be registered. Would you stick to every provision in the bill while also encouraging community registration?

Roseanna Cunningham: Yes. We need triggers in order to ensure that registration happens. Looking at the arrangements from the perspective of communities, we recognise and

accept that if communities can register on a whole-community basis, that is a big advantage for them.

Peter Peacock: Notwithstanding what you have said, the evidence that we have received overwhelmingly suggests that the system as envisaged in the bill will cause all sorts of difficulties in crofting communities. Would you be prepared to go a stage further in what you have announced today and consider this proposition? In a democratic way—in the spirit of the bill—we could say that if people wish to have their community or township mapped, they have an absolute right to request that, and the crofting commission or whoever would have to arrange with them for that to happen. All the trigger mechanisms that are proposed could be ditched. I suggest that because, just about everywhere we have gone, people have expressed a degree of confidence that they could successfully map their communities, and they think that the bill's provisions are unnecessary and might even impede that in some way. Would you consider going further and giving communities a right to request that?

Roseanna Cunningham: No. You are suggesting that we take away the other triggers.

Peter Peacock: Yes, that is exactly what I am suggesting.

Roseanna Cunningham: So, in a situation in which a community could not agree, there would be absolutely no basis on which anyone in it would get on to the register. That would not be particularly helpful.

If there are communities that are of the view that they could get round a table right now and sort everything out, I would absolutely encourage that. The more that happens, the faster the register will become effective. However, if the other triggers are removed, what would people be left with in situations where there is no community agreement? A big gap?

12:45

Peter Peacock: If communities decide, by democratic means, that they do not want to be mapped, presumably that signals that they are living in harmony and see no relevance in mapping. I make that point because many people have given evidence that, in many situations, the fence line is accepted as the precise boundary between crofts today, although it is not the legal boundary. As soon as we start to talk about the legal boundary, there will be disputes, because long-term heritable interests will suddenly come into play; at the moment, they do not. Most crofting communities live in harmony, and individual

crofters see being on a register as of no relevance to them. How do you respond to that point?

Roseanna Cunningham: I am not entirely sure that the picture that you paint is accurate. In any case, you are suggesting that we remove from individuals the right to register, if the community does not agree to a community exercise.

Peter Peacock: I am not suggesting that; I am suggesting that crofters should retain the option of having their croft boundaries determined—as they can today, through the Scottish Land Court. People think that the specific triggers—by regulatory applications or estate sales—will cause the biggest difficulty.

Roseanna Cunningham: The point of the register is to complete it. I am conscious of much criticism that the method that we have chosen to do that will make the process quite attenuated. There are contradictory arguments that we should have found a way of precipitating the completion of the register much faster. It does not make a great deal of sense—certainly not to me—to introduce a set of circumstances that could allow chunks of the register never to be completed.

Peter Peacock: I move on to another issue.

The Convener: Before you do so, Alasdair Morgan has a question.

Alasdair Morgan: Peter Peacock is right to say that there was general enthusiasm for the idea of communities determining boundaries. Is there an argument for delaying slightly the introduction of the trigger mechanism, to allow communities that want to move ahead on that basis to proceed, so that the process is not interfered with by registration being triggered when they are in the middle of doing something? We could set aside a period of a year or six months—I do not know what would be realistic—at the start of the process, during which communities that wanted to determine their boundaries could get engaged. The triggers would come into effect thereafter, if communities had not done that.

Roseanna Cunningham: You are suggesting a phase-in period that would allow communities to deal with the issue first; after that, the trigger mechanism would come into play. We can consider that suggestion, to see whether it is a workable alternative option in practice.

Peter Peacock: I am grateful to Alasdair Morgan for asking the question that I intended to ask. I move on to another issue, which relates to the purpose of the register. It is not entirely clear why a map-based register could not be kept by the Crofters Commission, given that it is the principal regulator. Why must the register go to the keeper? I understand that the Registers of Scotland is self-financing, so the arrangement automatically

triggers fees for crofters. Are you prepared to consider allowing the commission to maintain the register?

Roseanna Cunningham: It comes down to the fact that the Registers of Scotland has the necessary expertise. The arrangement was chosen as a means of elevating the crofting register into that category; the current commission register is merely an administrative register. It would be almost anomalous to turn the commission into the keeper of a register, because it would mean asking the commission to do something that it does not currently do when there is already a body that carries out property registration. It makes much more sense to us to adapt the IT system, the expertise and the general design process that are already in place.

Peter Peacock: Given your commitment to continue the current trigger mechanism, the crofter will incur a fee to register of between £80 and £120. We have also heard evidence that, in addition to that, it may be necessary to commission a solicitor or a surveyor to help with a map, and there will be costs attached to that. The bill makes provision for an application to be advertised in a local newspaper. Depending where someone is in the Highlands and Islands, it could cost them up to £350 to do that. If all those things came to pass and we totted all those costs together, we could be talking about a cost of close to £1,000 for a crofter who, individually, may see no particular benefit in the short term. What is your view about that?

Roseanna Cunningham: The key word in your outline of the scenario was “if”. We are not convinced that what you described will happen—nor is it required to happen. The truth is that crofters already expend significant amounts of money on a variety of disputes. There will always be crofters who are prepared to spend significant amounts of money to make arguments for and against the position in which they find themselves. Particularly when we are dealing with first registrations—we have to park the previous discussion about community mapping as opposed to individual triggers—some crofters may continue to be prepared to do that. My guess is that the vast majority of crofters will not be looking to make such expenditure, and I do not see that what you described will happen.

I have been handed a note to say that the advertising process will be aligned with the regulatory application, so it will happen anyway. That is perhaps one consideration.

Peter Peacock: It would be helpful if you could clarify that after the meeting. I am not entirely clear that that is the case. For example, someone would not have to advertise the fact that they are seeking an apportionment. The only thing that triggers an

advert is the fact that they are registering their croft. I am happy to have that answered after the meeting if that helps.

Roseanna Cunningham: Some of the regulatory applications require advertising, so some of the advertising will be aligned with that.

Peter Peacock: I would still like it to be clarified after the meeting.

Roseanna Cunningham: We can look at some of the specifics. You are saying that advertising will be required as a matter of course, but we do not think that that is necessarily the case.

Peter Peacock: My understanding from the bill and the policy memorandum is that the need to advertise arises from the registration process, and it would be helpful to clarify that.

The Convener: We can have that clarified later so that we can move on.

John Scott: I want briefly to argue things from the other side. You said in your letter that it could take up to two generations for the process of registration to happen. Are you happy with that timescale? If registration is such a good idea, that seems a long time to wait for it to happen.

Roseanna Cunningham: The land register was first introduced to Scotland in 1981 and, as I understand it, something like 53 per cent of properties in Scotland are still not on the register. Registers take a while to develop. The triggers that we are talking about will mean that the crofting register will achieve finality within a couple of generations. In the context of the likely timescale for the complete conversion from sasine to land register, that is pretty good.

The alternative would have been to drive registration as compulsory within a set time, triggers notwithstanding. However much people who value the register say that they would like to see it, its benefits will become fully evident only when it is complete. My guess is that forcing everybody to complete registration within five years, regardless of triggers, would have been even more controversial than what we are proposing.

John Scott: I was slightly concerned to read in your letter that IACS maps could not be used as a basis for the registration of boundaries—and it is worth pointing out that in the foregoing discussion about registration, you were referring only to boundaries, rather than transfers in other ways. Your letter says:

“it is extremely important to note that the boundaries on these maps do not relate to croft boundaries but to fields that are used for the purpose of claiming agricultural subsidies.”

Perhaps I have been labouring under a misapprehension for a number of years, but I thought that the point of IACS maps was that they delineated boundaries. It is strange to find that contradicted in black and white in a letter from the Government.

Roseanna Cunningham: Our information is that there are a number of maps that might be of assistance, including the IACS maps. However, as far as we understand the situation, the boundaries on the IACS maps do not relate to croft boundaries per se; they relate to fields on which a subsidy is claimed, which means that not all land that is held in crofting tenure will necessarily be on IACS maps. That is just a statement of fact. Because of that, you cannot simply transfer information from the IACS maps to the register's maps, because that will not catch everything. You will still need to consider individual circumstances. Using the IACS maps will not work.

John Scott: At the risk of being pedantic, could I ask you to recheck that with officials? I had always understood that the initial mapping exercise for the IACS system was meant to delineate the boundaries of entire holdings.

Roseanna Cunningham: I am advised that the IACS maps have only recently had extra detail added that might include things such as buildings.

The issue of the IACS maps was raised fairly early on. However, it proved to be impossible to make a direct transfer from the IACS maps to the maps of the crofting register.

John Scott: I stand by what I said.

Bill Wilson: Peter Peacock referred to apportionment and registration. However, I had the impression that the apportionment was part of the grazing, which would be marked by the Government, and would therefore not be part of the registration. I would appreciate it if that could be clarified—later is fine.

A concern has been raised that the mapping process could result in thin strips of land, which have been referred to as ransom strips, being taken out of crofting, perhaps because the original map stops at a ditch boundary even though the ditch is not actually beside the road, or because a gap has arisen in the mapping process when two adjacent crofts have been mapped. Have you any assessment of the level of risk of that happening? How might we ensure that the issue does not give rise to access problems?

Roseanna Cunningham: I would like to give a 100 per cent cast-iron guarantee that no such problem will arise, but, unfortunately, ransom strips occur across conveyancing. We will need to ensure that the first registrations are examined quite carefully and that, when any subsequent

registration involving an adjacent or neighbouring piece of land comes along and it looks like there will be an issue with a strip of land in between the two properties, that issue is considered. Certainly, at stage 2, we want to ensure that access rights are part and parcel of what is registered. In any normal conveyancing arrangement, it is not uncommon for people to have an access right over a piece of land that they do not own. What is important is that people are able to continue to access their property. We want to ensure that access rights are included in the register so that we can deal with some of the difficulties that might arise. That is the major problem with ransom strips; they only become a huge issue when they are used to deny access.

13:00

The Convener: Alasdair Morgan has a question—do you really have to ask it?

Alasdair Morgan: Absolutely. It arises from this morning's evidence, which I do not think that the minister will have heard. The Registers of Scotland seemed to indicate that, when registrations were made, it could ensure that there were no little gaps left between holdings because of people inadvertently not ensuring that boundaries that should be contiguous were so. However, although the witnesses said that that could happen, they did not say that it would happen. They seemed to be waiting for somebody to tell them to do that. Perhaps the minister might, at some stage, arrive at a policy decision to inform the Registers of Scotland that that is what it should be doing as a matter of course.

Roseanna Cunningham: We can certainly consider the need to do that. However, as I said, the issue is not confined to crofting but is live in all conveyancing. It will not be an issue for the first property that is registered, as it will be standalone; the issue may become apparent only with the subsequent registration of an adjacent property. The bill does not remove the ability of a subsequent registrant to say, "I would have drawn my boundary there, but that would leave a 2ft strip between my boundary and where my neighbour has registered his boundary." Were that to happen, the matter would be raised immediately as a live issue unless there were an agreement about access—as I said, the issue is about access as much as anything else.

It is a strong argument for the community mapping idea. If a community conversation were taking place, it would become evident quite quickly if there were random little bits of land about which everybody said, "I thought that that was yours," and nobody knew whose they were.

Alasdair Morgan: It is an argument for encouraging community mapping first of all.

Roseanna Cunningham: Yes. I will not say that anomalies will never arise. It would be a foolish individual who would ever say that. Having been responsible for one of the anomalies that has arisen, I am conscious that eagle-eyed lawyers are always looking for potential anomalies, too.

The Convener: I suspend the meeting for a minute, as we need to discuss where to go from here.

13:03

Meeting suspended.

13:05

On resuming—

The Convener: We are only halfway through our questioning and only halfway through the bill. In order to do it justice, we will reconvene with the minister next week to conclude discussions on the rest of the bill. We now have a chance to give the clerks who are writing the report a steer on the first two parts of the bill.

Thank you for joining us for this session, minister. If there is anything that you feel that we ought to have in writing, please send it to us as soon as possible. I also thank everybody in the public gallery for their attendance.

13:05

Meeting continued in private until 13:21.

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