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Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 17 March 2010

Session 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
7th Meeting 2010, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Bruce Beveridge (Scottish Government Rural Directorate)
Roseanna Cunningham (Minister for Environment)
Iain Dewar (Scottish Government Rural Directorate)
Heather Wortley (Scottish Government Legal Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 3

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 17 March 2010

[The Convener *opened the meeting at 10:51*]

Subordinate Legislation

Seed Potatoes (Scotland) Amendment Regulations 2010 (SSI 2010/71)

The Convener (Maureen Watt): Good morning. I welcome everyone to the committee's seventh meeting of the year. Members should please remember to switch off their phones and BlackBerrys, because they affect the broadcasting system.

The main purpose of the meeting is to take evidence on the Crofting Reform (Scotland) Bill from the Minister for Environment and her officials. It will be the committee's sixth and final evidence session on the bill. Before moving to the evidence, however, we will deal with a piece of subordinate legislation.

Item 1 is consideration of a negative Scottish statutory instrument. The Subordinate Legislation Committee has not made any comment on the instrument, no member has raised any concerns in advance of the meeting, and no motion to annul has been lodged.

If members have no comments, do we agree not to make any recommendation on the instrument?

Members *indicated agreement.*

Crofting Reform (Scotland) Bill: Stage 1

10:53

The Convener: Item 2 is ministerial evidence on the Crofting Reform (Scotland) Bill. I welcome the Minister for Environment, Roseanna Cunningham, and her officials from the Scottish Government: Bruce Beveridge, deputy director of the rural communities division; Iain Dewar, bill team leader; and Heather Wortley, solicitor.

We move to questions, which Karen Gillon will start.

Karen Gillon (Clydesdale) (Lab): One key issue in our investigations and deliberations has been neglect and the new duty that is to be placed on the Crofters Commission to deal with it. How will the commission monitor neglect and absenteeism? How will that be resourced, and how long will it take the commission to deal with some of the issues of neglect?

The Minister for Environment (Roseanna Cunningham): The first thing to do is point out that absenteeism and neglect are linked but not necessarily the same thing. We discussed that issue last week.

The current position on absenteeism is discretionary. However, when the legislation comes into force, it will place a duty on the commission to pursue absenteeism. In the meantime, we are ensuring that the commission is working on absenteeism, which is linked to neglect but is not the same thing. It is undertaking that exercise, in advance of the bill being passed and coming into force.

We anticipate and hope that, by the time the legislation comes into force, the existing situation with regard to absenteeism will largely have been resolved. The commission has written to about 600 absentees in the past two or three months and that work is proceeding. We anticipate that, by the time the commission has the new duty, the existing abuse resulting from absenteeism will in large part have been taken out of the system.

Until now, neglect—which as I said is linked but is not exactly the same—has been rather harder for the commission to deal with because a complaint has been required. The commission has not been able to be proactive in tackling neglect. As I said, the approach to absenteeism has been discretionary. The commission has, in effect, had to wait for formal complaints of neglect but, since 2007, there have been only two formal complaints, which of course is not to say that there have been only two cases of neglect; it means that the commission has not had powers to proceed.

We hope that by the time the new legislation comes into force, the principal part of the absenteeism problem will have been dealt with and the commission will be able to focus on the cases of absenteeism that arise at that point—rather than the long backlog that exists at present—together with issues of neglect. Neglect can occur where there are residents, so it is not necessarily about absenteeism. The two are linked, which makes it difficult to discuss them without talking about them together, but they are not exactly the same thing.

Karen Gillon: The Crofters Commission talks about issues of misuse and neglect. It has provided an additional submission for us, which members have received today and which raises concerns. It says that there are 18,000 registered crofts, of which 14,000 are occupied and 8,000 to 10,000 are worked. It states:

"the number of crofts potentially misused or neglected could be substantial."

The commission also states that the cost of following up an issue of misuse is about £563 per case. Assuming that there will be significant numbers of cases, the cost of tackling misuse could be in the range of £4 million. If it is tackled over 10 years, that is about £400,000 a year. The commission states clearly in its submission that there are no resources in the financial memorandum to allow that to happen.

It is fair to say that the most significant issue that the committee has encountered is neglect. From the supplementary paper that we have received today from the Crofters Commission, there appears to be a substantial gap between the reality on the ground and the resources that will be available to the commission to deal with neglect. The final sentence of the submission states:

"What is clear is that the new Commission, in looking at its policies, procedures and priorities in its Plan, will need to take its resource constraints fully and realistically into account."

If the bill is to be more than just a paper exercise, significant resources will have to be made available in addition to those that are mentioned in the financial memorandum.

11:00

Roseanna Cunningham: I have not had the opportunity to read the commission's additional paper, so it is a little difficult for me to comment directly on what it said.

There is a need to deal with neglect. We do not currently know how many cases there are of neglect and misuse, which are not the same, and it might well take a little time to establish the numbers. The newly reorganised commission will be able to choose the pace at which it deals with such issues. We are not imposing on the commission a timescale for dealing with cases of neglect. The commission is likely to want to focus first on the most obvious, long-standing and difficult cases, rather than try to deal with all cases of neglect across the board at the same time. We expect the commission to manage its workload sensibly in that regard. If the commission thinks that it does not have the full resources to deal with neglect, it must manage its workload. At that point it will be in a position to come back to Government and make an additional submission. It is difficult to hypothesise when we do not even know how many crofts fall into the category.

Karen Gillon: The committee's difficulty is that the bill will impose a statutory duty on the commission. The commission said:

"it is unclear how the Commission would identify potential cases of neglect and misuse ... It does appear that the new Commission would be able to choose the pace at which it addressed this work, but without dedicated resources allocated to it progress would risk being slow."

I appreciate that you have not had sight of the paper that I am quoting. Will you come back to us in writing, ahead of our further deliberations? The commission raises a substantial resource issue.

Roseanna Cunningham: I can say a couple of things about that. First, the newly elected commissioners will play a part in identifying areas, because they are most likely to be the people to whom cases of neglect and misuse are reported in the first instance.

Secondly, the issue to do with resources suggests that one would have to argue that the commission has in effect been doing nothing. I do not think that that is true. A lot of the issues are being addressed, although perhaps not at the pace or in as organised and efficient a manner as we would like. In that sense, we are not adding anything new to what the commission does. We are asking the commission to focus on the issue and to pick up the pace, but it will still be for the commission to identify the appropriate pace at which it can proceed. At that point, it will be for Government to decide whether that pace is reasonable and, if it thinks that the pace is not reasonable, to consider changing the commission's focus or indeed increasing resources. As I said, we do not know how many cases of misuse and neglect there are.

Karen Gillon: However, currently the commission can act only if there is a complaint, whereas the bill will place it under a statutory duty to deal with neglect whether or not there is a complaint. Under the bill:

"The Commission must, unless they consider that there is a good reason not to, give the relevant person a written notice informing the person that the Commission consider that the duty is not being complied with."

Given that there are 18,000 crofts, 14,000 of which are occupied and only 10,000 of which are being worked, there is an issue—

Roseanna Cunningham: There is certainly an issue—

Karen Gillon: Therefore, there is an issue for the committee, in that the commission tells us that there is a problem. The commission's submission has come late in the day, but it clearly identifies an issue on which it would be worth reflecting.

Roseanna Cunningham: We can always reflect on this. As I indicated, the fact is that the development function has been taken away from the commission and we have not reduced its budget or staff resources in any way as a result. That is an important point to note. Also, the absenteeism initiative, which is already under way in advance of the duty coming into play, may in and of itself throw up a number of cases of neglect. The duty will come into play only when the act comes into force, at which point we expect the commission to look seriously at its processes. It will need to look at how it can streamline things and ensure that its work can be done at a reasonable pace. We see no need for it to get additional resources at this stage, although I would never rule out the possibility that that might change. If it does, the Government of the day—whatever its colour—will have to consider the matter.

The commission itself will decide how to identify neglect and that will, of course, determine how it deals with the issue and at what pace. The commission may decide to deal with the issue on an area-by-area basis or according to the length of time for which any alleged neglect has taken place. It is for the commission to decide how best to progress this part of its new duty. I assume that it will take the decision on the basis of what it thinks is a manageable and achievable workload. In the first year of the commission taking on this new duty, we do not expect it to, by definition, act on every single case of neglect at the same time. As I said, it will be for the commission to decide how, in what way and at what pace it will work on neglect under the duty.

Karen Gillon: That prompts the question, if we have no expectation of when neglect will be dealt with, why have the duty in primary legislation? Is there no timeframe for dealing with it? I accept that it will take a period of time to address neglect, probably even up to 10 years, but we have expectations about what should be achieved year on year so that we make crofting more attractive and tackle neglect.

I turn to absenteeism. How will the commission identify someone who is not resident? Will it require to check physically the property or will it rely on local informers, so to speak?

Roseanna Cunningham: With respect, the commission is in the process of dealing with 600 absenteeism cases, so clearly it already knows of a huge number of them. As I said, the absenteeism initiative is under way, so we expect that by the time the duty comes into force, a large part of the current absenteeism hangover will have been dealt with.

The commission will find out about absenteeism in many and various ways, including through the elected board members and assessors, and by way of changes in regulation and succession. All sorts of occasions trigger the commission's awareness of absenteeism in terms of crofting ownership or tenancy. As I said, the commission is already clearly aware of a substantial amount of absenteeism, otherwise it would not have been able to embark on the absenteeism initiative. We asked the commission to tackle absenteeism this year, and it is in the process of doing so.

John Scott (Ayr) (Con): I return to the costs of neglect, which Karen Gillon raised eloquently. I am concerned to note that in the financial memorandum, under "Costs to the Scottish Government", the commission has already cost the Government around £3.8 million. A further £100,000 was allocated in 2009 to deal with the problems of absenteeism and neglect. As Karen Gillon said, the information that there may be up to 8,000 cases of neglect to deal with, at £563 a head, came to us late in the day. We can argue about the figure—if there are 8,000 cases, that is £4 million; if there are 4,000, it is £2 million—but nowhere in the financial memorandum is allowance made for a figure on that scale. The committee was surprised to receive that information now, but the Government cannot have been surprised when preparing the bill and the financial memorandum to learn that there might be such costs to deal with. How has a potential cost of £4 million crept up on us and skelped us in the ears?

Roseanna Cunningham: We have not seen the information to which you refer.

John Scott: You introduced the bill.

Roseanna Cunningham: You may wave your hands around, but currently we are unable to assess whether we agree with the figure that has been given. I reiterate what I have said: we are not expecting the commission to deal with 4,000, 10,000 or however many cases—we do not know how many there are—within a year or two. Karen Gillon raised the issue of timescales. If I had said that we intended to impose a timescale on the commission, there would have been even more curious questioning about how on earth we would

ever be in a position to ensure that the commission complied with it. We are giving the commission some leeway, flexibility and freedom to decide the pace at which and the manner in which it proceeds. It may work on an area-by-area basis.

John Scott: In the past three years, the commission has dealt with three cases. We are promulgating the possibility that there may be 8,000 to deal with. Would you care to put a figure on what you expect the commission to deal with, based on what is affordable and reasonable, on a year-by-year basis?

Roseanna Cunningham: I am not in a position to do that today. First, we do not know how many cases of neglect there currently are. We would get that information directly from the commission, but it is clear that at the moment it does not know the figure. Secondly, the commission's plan will set out its annual expectations. It will be able to report to us annually on whether it is meeting those expectations. The freedom and continuing flexibility that we give the commission to manage its internal processes will allow it to pace its activity in an entirely manageable way. If it finds that initially it sets its expectations too high or too low, we will look to it to adjust those expectations accordingly. Until the number of cases of neglect has been identified, it will be extremely difficult to say how long the process will take and how much it will cost to fix the problem.

John Scott: Last week, I described the financial memorandum—perhaps jocularly—as either a black hole or a blank cheque. You are telling us that you cannot tell us how many cases of neglect you expect there to be and what it will cost to deal with them. I am surprised and dismayed that the issue is being handled in that way.

Roseanna Cunningham: With the greatest respect, this would be an interesting conversation to have if the commission had not existed before and we were setting it up on a blank sheet of paper. However, the commission exists, has processes, has staff and has resources to do the regulatory work on which it is to focus. We have removed the development function specifically so that it will be able to focus its resources entirely on the regulation of crofting; that is what it is being asked to do.

The commission can submit a plan and will provide us with annual reports. If it wishes, it can proceed on an area-by-area basis. We can in a couple of years' time, when the commission is in a better situation with regard to identifying the number of cases of neglect, consider on the basis of the commission's plan for the proposed handling of those cases whether resources are necessary. That will be the appropriate time to consider that. I repeat that we know or do not know how many cases there are according to whether the commission knows or does not know. However, we do not believe that the current proposals require the extra resource that you are talking about, otherwise we would allocate extra resources long before they were required.

11:15

Bill Wilson (West of Scotland) (SNP): You obviously have not seen the supplementary evidence from the Crofters Commission. Section 23 of its submission, which provides estimates of the number of cases, is couched in very general terms, such as,

"It is extremely difficult to estimate the number of cases ... it is unclear how the Commission would identify potential cases ... As a guide it is estimated that"

and

"This suggests that the number of crofts potentially misused or neglected".

In other words, it is clear that the commission does not know exactly how many cases there are.

Roseanna Cunningham: No, and that is evidence of the need to refocus the commission's work on some of those concerns. Neglect is a big problem, and if it is not identified and addressed it becomes part and parcel of the long-term decline of crofting.

Before the commission can establish how many cases it will have to deal with, it will have to establish the guidelines for how it will assess neglect. When it has done so, we will be in a better position to make estimates.

The difficulty, of course, is that levels of neglect and absenteeism vary from area to area—there are much greater levels in some areas than there are in others. If we assess an area and find that a percentage of crofts suffer from neglect, we cannot just apply that figure to all the crofting counties. The commission will have to think carefully about how it makes that assessment. When the assessment is made and the work begins, the commission will have to establish—in its plan, and subsequently through its annual reporting mechanism—what is reasonable in terms of the way in which and the pace at which the identification process is carried out. We have not put a timescale on the process at this stage; we simply do not know, because the commission does not know.

Elaine Murray (Dumfries) (Lab): You mentioned a couple of times that you are refocusing the work of the Crofters Commission, and that the development function has been transferred to Highlands and Islands Enterprise without any diminution in budget. Do you have an estimate for the cost to the Crofters Commission

of the development function? In other words, how much of its budget was spent on development?

Roseanna Cunningham: About £100,000. We gave £175,000 to HIE, so that is the figure that we are talking about in relation to the budget for staff et cetera.

We need to remember that the commission has a job to do internally to ensure that the refocusing works efficiently. This year might be interesting for the commission, because it has to get its processes in line so that when the legislation comes into force, it is in a better position to work as effectively as it can.

Elaine Murray: So you anticipate that there will be some efficiency savings on top of the £175,000.

Roseanna Cunningham: There is an expectation that there will be efficiency savings across the entire Government, as everybody is well aware.

Elaine Murray: On a slightly different issue, you will be aware that Professor Jim Hunter gave evidence at an early stage, which contained some criticism of the bill. We asked him to come back and suggest alternatives for dealing with absenteeism, and he provided a written submission, in which he suggested that the issue could be tackled with the use of a financial penalty. He suggested, for example, that all crofts should be subject to an annual registration fee, which would be nominal for resident crofters but substantially greater—perhaps £1,200—for absentee crofters. Such a solution would, of course, still require us to define the term "absentee crofter". What is your reaction to that way of dealing with absenteeism and neglect?

Roseanna Cunningham: That might be phenomenally difficult to administer. We are trying to focus more on reducing absenteeism so that only those who have a good reason to be absent are absent. If someone has a valid reason for their absence, and they have agreed that with the commission, they will not be penalised. We hope that there will be no absentees at all. We want absenteeism to be managed out of the system by the commission through the absenteeism initiative.

Jim Hunter's proposal presumes continuing high levels of absenteeism, and suggests that the increased registration cost should be the disincentive. However, given that absentees might be outwith Scotland or the UK, I can see all sorts of difficulties in trying to implement that proposal. I assume that he is talking about people registering on the new crofters register. The difficulty with that is how the keeper would assess the cost of the register, in those circumstances.

It would be better to tackle absenteeism head on. Ideally, the only absentee crofters will be those who have an agreement to be absent for good reason—we have already talked about what such reasons would be.

Jim Hunter said many things that would probably strike horror into the hearts of many folk. I believe, for example, that he wants to do away with the distance rule, which would mean that every crofter would have to be physically resident on their croft. That would be an interesting rule to enforce. I am not sure that Jim Hunter has thought through how his proposals would be dealt with in practice.

John Scott: As we have dealt with absenteeism in a fairly substantial way, I want to address neglect.

The Crofting Commission suggests that 8,000 to 10,000 of the 18,000 or so crofts are worked, which means that it is possible that 8,000 to 10,000 are not worked and are, therefore, neglected.

Given that less favoured area support scheme payments are diminishing, or are likely to diminish, according to evidence that we have heard—it is difficult to get into the Scottish rural development plan—how will you encourage those thousands of people who have hitherto neglected their crofts not to neglect them? How will you incentivise that work? Those crofts were never at any point regarded as viable agricultural or farming entities. As time goes on, the problems of distance from markets and peripherality remain. I cannot see how, in the real world, you will make people work crofts.

Roseanna Cunningham: First, there are plenty of people who want to become crofters, so there is a demand that is not being met. At the moment, people cannot get crofts, even though there are crofts that are either tenanted by absentees or are not being worked. It is not the case that there is a load of crofts lying empty because no one wants them. Across all the crofting counties, there are people who want to become crofters.

John Scott: Have you got a number for how many people want to become crofters?

Roseanna Cunningham: No. Loads of people do not bother even to put themselves on to any waiting list, because they know that it is an almost pointless exercise.

John Scott: It is just that you were very definite about there being a lot of people, so I thought that you might have a number.

Roseanna Cunningham: If you look at specific reports from places such as Camuscross, you see the numbers of local people who want crofts. There are others from outside the crofting counties

who want to get into crofting, and there are people who never bother to register with the commission. I do not know the exact number of people who are officially registered as trying to get a croft, but we know that we could add to that number.

There are empty crofts and neglected crofts, and there are people who want to become crofters. It is not the case that the crofts are all empty because people are walking away from them because they do not have the money to work them. A lot of crofts are treated as if they are second homes, which is a big issue that we need to tackle because it was never intended for crofts to be used in that way.

There are means and mechanisms by which people can ensure that a croft is worked. We have set the commission a role to identify that and to establish people's proposals and what can be done. Absentee crofters will be challenged strongly on what they are doing.

John Scott: Where do you draw the line between an occupied croft and a worked croft? The Crofters Commission is definite about it, and there is an important distinction to be made. Some 14,000 of the 18,000 crofts are occupied—which means that 4,000 are not—but that is different from those crofts being worked.

Roseanna Cunningham: Of course it is.

John Scott: A lot of people want to live in crofting areas, but do lots of people actually want to work crofts? That is the distinction that we need to make: we need to establish whether there are 8,000 to 10,000 people—or the number commensurate with reducing neglect—who want to work those crofts.

Roseanna Cunningham: Working the land means that the crofter or their family works or makes arrangements—with hard labour if that is considered appropriate—so that the croft is either cultivated or put to some other purposeful use. In the crofting counties, you can see crofts being put to all sorts of uses that would not necessarily have been in people's minds 50 or, much less, 100 years ago. I have spoken to a crofter who has turned his croft into what is, in effect, a small tree nursery, and there are crofters with polytunnels. Those are examples of crofts being put to purposeful use, which does not always mean that the person who is doing the work resides on the croft. Crofts being put to purposeful use is important, and it is important that people can sublet in order to achieve that.

We still want to maintain a focus on ensuring that, as far as possible, there is a population in the communities, but that approach does not preclude crofts being put to purposeful use in other ways, which clearly happens now. Putting a croft to purposeful use in whatever way, shape or form means that the croft is not neglected or misused. It would be a mistake to assume that, because a croft is not occupied by a crofter, it is neglected or misused. It may be, but it may not.

Liam McArthur (Orkney) (LD): As John Scott suggested, the motivations behind why people want to live in the crofting communities and take on a croft are many and varied. We have certainly picked up that there is unmet demand—although not to the extent that we can put a number on it—and some of the evidence has suggested that the motivation is in the blood.

I know that the bill does not directly relate to some of the issues that John Scott touched on, but we have heard evidence about concerns that the level of LFASS support for crofting areas is reducing. As you will know, the SRDP is a competitive bids system. While the money is going out, it looks quite healthy, but the fact that the funding is going in larger chunks to bigger projects means, by definition, that it is not going to smaller projects and initiatives, such as those in the crofting counties. As John Scott suggested, although there may be demand to get into crofting, there is among those who are actively crofting and those who are looking to get into it a common concern that the funding mechanisms are not meeting the needs of the crofting communities.

11:30

Roseanna Cunningham: LFASS is not entirely within my purview, as Liam McArthur probably realises. However, the Cabinet Secretary for Rural Affairs and the Environment has recently made announcements about refocusing it on areas that are considered to be fragile and peripheral. I know that there is a hill farms initiative; I suspect that a number of crofts would also come under that. I dare say that crofters would like more money.

Liam McArthur: My point was specifically about the SRDP. When we had discussions during the budget process, the figures on SRDP expenditure that the cabinet secretary was able to roll out looked impressive, but when we scratched beneath them, it was clear that a number of big allocations had been made to sizeable projects. Those allocations were doubtless very beneficial, but they have meant that there was less money to go into smaller projects.

Roseanna Cunningham: I can understand that. That issue is part and parcel of the on-going debate about the uses to which SRDP money is put and whether it would be better focused if it were parcelled out in smaller amounts to smaller ventures more widely across Scotland. However, I cannot debate that in discussing the Crofting Reform (Scotland) Bill; it is a much bigger issue that needs to be dealt with elsewhere.

We hope and believe that the next SRDP round will be a bit simpler to operate, which might make it more accessible to crofters who may have felt a bit locked out of it because of its complexity. I know that complaints are often made about that. We need to keep in mind that schemes are in place in the SRDP, under rural priorities funding, that are specifically for crofters. I think I am right in saying that Liam McArthur and I have corresponded on the on-going issue of the underspend in the crofting counties agricultural grants scheme. Again, that suggests that crofters are not accessing moneys that are currently available to them. That is an issue, but it needs to be dealt with separately. Liam McArthur and I have corresponded on it for a slightly different reason, but the underspend continues, although money is available for crofters. If people are looking for more money from different places when money that is already available is not being drawn down, that means that something slightly more complicated is going on that will not necessarily be fixed simply by adding more money to an existing pot of money. It is clear that the argument is slightly more complicated than is thought.

Liam McArthur: I appreciate that some of what we are discussing may come under owner-occupier and tenant issues. I will leave things at that.

Elaine Murray: I refer the minister to section 20, in part 3 of the bill. On page 15, it is proposed that section 5B of the Crofters (Scotland) Act 1993 be substituted. Proposed new section 5B(4) states:

"But where the crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—

(a) the natural beauty of the locality of the croft; or

(b) the flora and fauna of that locality,

the crofter's so engaging or refraining is not to be treated as misuse or neglect as respects the croft."

Who will decide that the natural beauty of the croft is such that it is okay not to use it, or about the flora and fauna? Is there a loophole? Somebody could say that they have seen a rare butterfly on a croft, and that could be an excuse for their not working it. Will an arbiter make such decisions?

Roseanna Cunningham: If any crofter saw a rare butterfly on their croft, they would need to contact the commission and talk to it about how the matter would be handled. It would not be enough for a crofter to pop up and say, "No, this isn't neglect. It's just me allowing what is happening for conservation purposes." They would have to show a planned conservation process and that they were not simply turning their back on other activities. The commission would need to be satisfied that what it saw was planned and managed.

Bits of SRDP money may be available for some such ways of planning and managing things, but it will not be—as Simon Fraser suggested—an easy way for crofters to abandon their crofts. That section might look like a loophole but it ain't. We make that clear.

Elaine Murray: Crispin Agnew suggested that an external body such as Scottish Natural Heritage should approve the approach.

Roseanna Cunningham: I presume that SNH would have to be involved: the minute somebody saw something that they genuinely thought was a rare butterfly for example, SNH would be extremely interested in knowing about it. SNH would be able to identify more clearly what might or might not be on the croft and advise whether we were talking about something that was genuinely rare and required conservation.

Elaine Murray: Andrew Thin was a bit concerned about the resource implications for SNH if it was required to approve a crofter's plan for conservation. He suggested something not dissimilar to what you describe, but perhaps his suggestion makes the situation clearer. He proposed that the bill should require crofters to put their crofts to purposeful use and that it should place a statutory duty on the crofting commission to publish and keep up to date guidelines on what it considered to be purposeful use. Would that be a helpful amendment to make it clear that there was no loophole?

Roseanna Cunningham: We already have a definition of using the croft, which talks about "purposeful use". That phrase can encompass conservation use, of course. The officials might not be happy about it, but I have no great objection to saying that purposeful use may include conservation. However, we have to be careful because the moment we start listing things, lawyers tend to look at what has not been listed and say that it must be allowed if we have not listed it. We would have to be very careful about how any such amendment was framed.

Elaine Murray: It could be in the form of guidance rather than in the bill.

Roseanna Cunningham: It could be. There would be nothing to prevent us from doing that. The loophole has existed that allowed people to wander off and say that they were doing so for conservation reasons without any requirement for them to give evidence that that was really what was going on. We are now saying that the commission will have to endorse that approach as being legitimate and that, if a crofter wants to do that with their croft, the onus will be on them to establish for the commission that there is a case for conservation. I guess that going around with a book of British butterflies will not be sufficient.

Iain Dewar (Scottish Government Rural Directorate): I clarify that it is possible for a crofter to refrain from activity at the moment if it is for the purpose of conservation or to preserve the landscape of an area, but there is no requirement to demonstrate that that is planned and managed activity. That is the loophole that exists. In the bill, we tighten up the requirement so that a crofter cannot simply say that they are not doing anything on the croft because they are preserving a certain butterfly's natural habitat or the landscape; they will have to demonstrate that it is planned and managed activity. If they are able to demonstrate that, the commission will not pursue it any further.

John Scott: The minister said—I think that these were her words—that a kind of plan would be necessary. Andrew Thin definitely thought that there would need to be a management plan, and any agricultural scheme in which I have ever been involved has required some sort of plan to be approved by the department of agriculture, or whatever it is called nowadays. I am still unclear as to how the Government will make certain that the current loophole is closed.

Roseanna Cunningham: The commission will have to endorse the plan. People will not simply be able to decide unilaterally to do that without getting—

John Scott: Will that happen by word of mouth? Will somebody go to the commission and say, "This is what I am doing," or will they have to produce—

Roseanna Cunningham: The commission will make a decision about how to deal with that aspect of what we are asking it to do. The commission might ask for evidence that something is rare or that there is outstanding natural beauty, and it might ask the person to say how they will look after the area for that purpose. The commission will have to make up its mind about the most appropriate way for a crofter to justify the decision. We are not telling the commission that it must take a certain approach. The commission will develop for itself what it thinks is the most appropriate way of handling the matter. That might or might not include a reference by the commission to SNH, or the commission might ask the crofter to say what information he has had from SNH. The commission can choose which way to do it. However, the commission will be required to satisfy itself that the process is planned and managed. It will not simply turn its back and walk away.

The Convener: We have covered that issue sufficiently. We move to owner-occupier crofters.

Peter Peacock (Highlands and Islands) (Lab): The bill proposes to equalise the responsibilities of owner-occupier crofters with those of tenant crofters. When your officials gave evidence, they indicated that consideration is being given to the potential for equalising rights, so that, for example, access to grants would be equalised. Has that consideration been concluded? Is it the intention to equalise access to grants for owner-occupiers and tenants, or has that still to be resolved?

Roseanna Cunningham: At present, owner-occupiers can access crofting agricultural grants, but they are subjected to a means test to which tenant crofters are not subjected. We propose to amend the crofting counties agricultural grant scheme—CCAGS—to treat them equally. That is a definite decision. Similarly, we propose to allow tenants of owner-occupiers on short leases to be treated in the same way as subtenants. We have already decided to do that, but that is in the context of CCAGS, rather than the bill.

Peter Peacock: That is helpful, but will you clarify whether everybody will be means tested?

Roseanna Cunningham: No—owner-occupiers will be means tested.

Iain Dewar: Owner-occupiers are means tested at present, but tenants are not. The proposal is to treat them equally.

Peter Peacock: If owner-occupiers currently have access and are means tested, what will change?

Roseanna Cunningham: Owner-occupiers will be treated equally with tenant crofters and will not be means tested.

Iain Dewar: Yes. They will not be means tested.

Peter Peacock: Right. That is what I was trying to establish. Will the budget grow correspondingly, or will the increased pressures have to be met from within the existing budget?

Iain Dewar: As the minister said, the CCAGS budget is underspent, so there is capacity in it. On the other proposed changes to CCAGS, the Government's response to the Shucksmith inquiry indicated that it would provide an uplift for new entrants into crofting. If memory serves me right, it is a 10 per cent uplift for new entrants.

Roseanna Cunningham: That has been agreed.

Iain Dewar: So, there are other components of the changes that we propose to CCAGS, in addition to equalising access for tenants and owner-occupiers.

Peter Peacock: That is helpful. I have a question on the principle of equalisation between tenants and owner-occupiers. It is widely, although not universally, held that people currently remain as tenants because of the preferential access to the grant scheme. If that access is to be

equalised, there will be less reason for people to remain tenants. That causes concern. For example, the Aiginis grazings committee said:

"The Committee is fundamentally opposed to any loss of distinction in legislation or in the grant schemes, which would lead to the equalisation of status between tenant crofter and the Owner Occupier. If the distinction is not retained and equalisation occurs, the historic tenanted system achieved in the 1886 Act will come to an end which would be a gross betrayal of our inheritance."

The quotation exemplifies people's worry. Why would a crofter remain a tenant if tenants and owner-occupiers had equal access and obligations under the crofting system? Over time, the proposed approach has the potential to bring to an end or reduce significantly the tenanted system, which is where the origins of crofting lie.

11:45

Roseanna Cunningham: That might have been a reasonable argument at the time when the right to buy was introduced, but to be honest I am not sure that it is an overwhelming argument for maintaining the distinction. We regard owner-occupiers, as well as tenants, as crofters. All tenants can choose to become owner-occupiers at any time. We were set on that road as soon as the right to buy was introduced.

I said that we are considering equalising access to grants. It is the view of the Government that tackling issues such as absenteeism and neglect is more important than ensuring that crofters remain tenants, particularly given that the right to buy was introduced as far back as 1976. We can debate that point. In a sense, you are reopening the debate on the right to buy.

Peter Peacock: The pragmatic argument is that a number of people have remained tenants because of the system of access to grants, and if the system changes there will be a greater incentive to become an owner-occupier. The underlying concern is that the approach might lead to the free market in crofts to which many people in many parts of the Highlands and Islands are very much opposed. Part of the policy intent of the bill would therefore be defeated. That is the argument.

Roseanna Cunningham: Let me turn your argument on its head. In my view, if we were trying to maintain tenancies as opposed to owner-occupied crofts we would have to reconsider the whole set-up around the right to buy. I know that some people want the right to buy to be brought to an end, but I am not sure that ending the right to buy would be more popular than any other decision about crofting that we might make.

We have chosen to focus on absenteeism and neglect, which we think are the biggest threat to crofting in Scotland. There is an interesting debate to be had about whether owner-occupiers and tenants should have equal rights, but my biggest concern is to tackle absenteeism and neglect. If that means that more tenants choose to buy, those tenants will only be exercising the right that they were given by a Labour Government in the 1970s. The right-to-buy legislation exists and we cannot make a decision on every potential crofting reform on the basis of whether it will increase the number of people who choose to buy.

Peter Peacock: I want to be clear about your policy position. Are you quite relaxed about movement from a tenancy-based system to more owner occupation, if that is a consequence of the bill?

Roseanna Cunningham: I am not relaxed about absenteeism and neglect—

Peter Peacock: That was not the question—

Roseanna Cunningham: The right to buy was brought in by a Labour Government some 35 years ago. That is the legislation that exists in respect of whether crofters can choose to buy. We have decided that we will not interfere with the right-to-buy legislation.

Peter Peacock: But, with respect, that was not my question. I think that you said earlier—

Roseanna Cunningham: I know what you are trying to do, Mr Peacock. You are trying to put words into my mouth. I am being very careful in not allowing you to do that.

Peter Peacock: No. I am not trying to do that. I think that you already said those words. I simply want to ensure that I have got them clear. You said earlier that the prime concern of the Government was not more people moving from tenancy to owner occupation—

Roseanna Cunningham: They are exercising the right to buy that a Labour Government gave them and that we have chosen not to interfere with.

Bill Wilson: Concern about the right to buy relates in part to speculation. The concern is that if more people can buy their crofts, they may be more inclined to speculate on the value of the croft. A more vigorous pursuit of absenteeism may reduce the risk of speculation, but that will depend on how absentees are pursued. What are your thoughts on that? I hope that I have made clear my question.

Roseanna Cunningham: I am not quite sure where you are coming from.

Bill Wilson: Let us imagine a situation in which the commission is pursuing vigorously an absentee and the individual tries to delay the process by saying, "I want to see if I can get

£30,000"—or £40,000 or £50,000—"for this croft." We may reduce the risk of speculation if we enable the commission to say, "No. You have only a short period of time. After that, we will ensure that the croft is taken over by a tenant." On the other hand, if the individual can hold up the process indefinitely—

Roseanna Cunningham: Let us not forget that the potential for financial reward is what drove some people into owner occupation in the past. People speculated to see what they could get out of a croft. Another part of the bill deals with speculation. It will strengthen the commission's position in terms of the planning process and decrofting. There is also our intent to deal with the Whitbread loophole. In effect, there is another side of the coin, which may disincentivise those who intend to use owner occupation to realise what has hitherto been seen as a possibility, which is to make a considerable amount of money from the sale of a croft.

Iain Dewar: The bill proposes pursuing absentee owner-occupiers as well as absentee tenants. For as long as the land remains under crofting tenure, the simple exercise of the right to buy will not absolve someone of their responsibilities; it does not automatically remove the land from crofting tenure. The land remains under that tenure along with the responsibilities that are associated with such tenure. The land is removed from crofting tenure only when it is subsequently decrofted or resumed.

Bill Wilson: The definition of an "owner-occupier crofter" in the bill suggests that it is intended that that would be an individual, but one can imagine circumstances in which a croft is left to siblings—in other words, the inheritor would not be an individual. I refer to proposed new section 19B(1)(b)(ii) on page 16—don't you just love these references?

Roseanna Cunningham: It refers to a "person".

Bill Wilson: Yes. What happens if a crofter's successor in title is not an individual but siblings? Which owner-occupier crofter is subject to the duties? Does the owner-occupier have to be a "person"?

Iain Dewar: Heather Wortley might like to answer that, minister.

The Convener: As the legal person, she is answerable—

Roseanna Cunningham: My advice is that the legal person does not have to be a human being. [*Laughter*.] I am being a little cautious in what I say.

Bill Wilson: So it could be your favourite form of sheep.

Roseanna Cunningham: No; this is a slightly different issue.

The Convener: Please explain, Heather.

Heather Wortley (Scottish Government Legal Directorate): The legislation is not entirely clear or consistent on when the reference is to one natural legal person and when it is not. We are looking at that. There are instances in which the legislation refers specifically to "a" natural legal person—

Roseanna Cunningham: You are referring to existing legislation.

Heather Wortley: Yes. We are looking at the matter in advance of stage 2.

Bill Wilson: Obviously, the matter is relevant to issues such as voting. What would happen if siblings inherited a croft but there was only one vote?

Elaine Murray: During the discussions on the Marine (Scotland) Bill, I referred to a statutory instrument that indicated that the singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

Roseanna Cunningham: I remember that.

Bill Wilson: The problem is the issue of who is responsible for the various bits and pieces—

Roseanna Cunningham: Heather Wortley's point was that the existing legislation has not always been clear, from one act to another, about exactly what is meant. Whatever the outcome on voting, there will be only one vote. If you are talking about a sort of joint tenancy, that does not happen between husband and wife and, in my view, it will not happen between siblings. There will still be only one vote.

Bill Wilson: Is the issue of leaving the croft to siblings one that needs to be clarified at a later date? I suspect that you will be unable to give me a quick answer to that.

The Convener: I think that the answer is yes.

Roseanna Cunningham: I can provide some clarification. However, it has always been one individual who assumes the role of the crofter. We had a separate debate about the numbers of men and women. A lot of crofters will have been husbands and wives, among whom one chose to be the registered crofter.

The Convener: We need to move on, and perhaps get some clarification on that.

John Scott: To finish off on that point, I would have thought that partnerships or entities would also need to be accommodated. Groups of people may well take a tenancy.

On tenancies, the bill provides a new power for owner-occupier crofters to let their croft for up to 10 years without creating crofting rights. Rather engagingly and perhaps rather dramatically, Professor Hunter described that proposal as "bizarre" and said that it

"should not be touched with a bargepole."—[*Official Report*, *Rural Affairs and Environment Committee*, 20 January 2010; c 2311.]

What are your views on that, minister?

Roseanna Cunningham: In most of his evidence, Jim Hunter was being deliberately provocative and apocalyptic in his interpretation of the issues. Subletting happens now, and it is a useful tool in tackling absenteeism. I am not entirely sure why Jim Hunter should feel so strongly about it. Formally or informally, it is what happens in a lot of cases.

John Scott: So you think that the new power is a good idea.

Roseanna Cunningham: I think that it is an appropriate tool in tackling absenteeism.

Bill Wilson: I can see the logic of the proposal, but is there a risk that we could have an individual on rolling, 10-year, short-term leases and none of the long-term security that we expect from crofting tenure?

Roseanna Cunningham: That is not the intention. If that began to emerge, we would probably be slightly concerned. The scenario of rolling 10-year leases is not the intention.

The Convener: We move on to the reletting of crofts.

Liam McArthur: We have touched on the issues of absenteeism and neglect. In section 26, the bill sets out the procedures for terminating a tenancy where there is a failure to meet the residency or purposeful use requirements. It would be useful to know what your expectations are for that part of the bill, and whether the crofts that may become available through that procedure would be directed to new entrants to address the unmet demand for crofting tenancies that we discussed earlier.

12:00

Roseanna Cunningham: In the case of a tenant crofter, the commission would make an order terminating the tenancy and declaring the croft vacant. The landowner would then be invited to submit a letting proposal, and it would be for the landowner to decide who was potentially an appropriate tenant. In a sense, the same approach would be taken to owner-occupiers. The commission would declare the croft vacant and invite the owner-occupier to submit a letting proposal. Failure to submit a proposal would result in the commission proactively chasing a letting proposal.

In such circumstances, I think and hope that potential new crofters would be among the people whose names were put forward. Of course, we cannot mandate that. Given current advice, we have not included a specific requirement that, for example, one name in every three should be that of a new crofter. I suppose that in theory it would be possible to consider doing that, to try to maximise the potential for new crofters.

Liam McArthur: Do you envisage obstacles for new entrants? An issue that has cropped up is financing and viability. The croft entrant scheme was closed to new applications a couple of years ago and Highlands and Islands Enterprise has suggested that it would be beneficial to kick-start the process, perhaps through SRDP funding. Have you considered such ideas, or are you prepared to do so?

Roseanna Cunningham: The issue of new entrants to crofting—as with new entrants to farming—is of constant concern and we are trying to seek the means to address it as effectively as we can do, although the middle of an economic recession is not the time that we would choose to do so.

Liam McArthur: On farming, we have established that whatever the demand from new entrants, they have not been able to go into it.

Roseanna Cunningham: They cannot get on the ladder. I am not sure that the situation in crofting is quite as bad as that. There is considerable demand, notwithstanding people's knowledge of the current circumstances. I would be concerned if I thought that people were being deliberately excluded because they would be new crofters. We must remember that many potential new crofters are people who already live in the crofting communities and want to take over an empty croft. Such people are well aware of the circumstances of crofting.

Liam McArthur: When we took evidence in Caithness and Sutherland, we heard that appearing desperate to get one's hands on croft land is the most likely way of being excluded from doing so by landlords who go to some lengths to ensure that vacant tenancies are passed on to someone else. Are you prepared to consider a system in which a list of potential tenants would include new entrants?

Roseanna Cunningham: My mind is certainly not closed to that. I sound a note of slight caution about the situation that you described, in that people who are desperate to get their hands on croft land are not necessarily first-time crofters. I do not know the circumstances of specific cases,

but if it was alleged that a landlord would not let to people who were strongly desirous of becoming crofters or having the land, I would need to know what was in the landlord's head, because they might be excluding existing crofters from getting more land and favouring people who were not already crofters—I simply do not know. Such stories can be apocryphal. The evidence does not always turn out to be as accurate as people imagined that it was, when it is all mined out.

The Convener: We will move on to regulating development on croft land.

Alasdair Morgan (South of Scotland) (SNP): Minister, in an answer to Bill Wilson you referred to a proposal to reinstate what was thought to be the law, before the Land Court made a contrary decision, to allow the crofting commission to refuse to decroft land for which planning permission has been granted. It has been suggested to us that there is a slight tension there, because the planning committee, which grants such permission, is democratically elected—the commission will be only partly democratic.

Two alternative suggestions have been made. One is that the commission should be a statutory consultee on any planning application that is against the development plan. The other suggestion, which is a bit more radical, is that croft land would have to be decrofted before a planning application could be made. Do you have any thoughts about either of those suggestions?

Roseanna Cunningham: It is worth remembering that someone may apply for planning permission to develop on land that they do not own. The simple fact of getting planning permission does not of necessity mean that the development will ever take place.

Such cases occur, and the situation that has pertained up to now is that, because of the court case that you mentioned, the Crofters Commission has felt obliged to decroft land once planning permission is granted. The court case effectively said that, but we are saying that that is not the case. That will not prevent the development from going ahead; it will mean only that if the commission refuses to decroft, whatever someone chooses to do will remain on crofting land, for which the various rules and regulations about crofting will still apply. Therefore, if someone built their eight-bedroom boutique hotel—or whatever the plan was—it would still be on crofting land. It would still come under the clawback provisions, which we are talking about extending to 10 years instead of five. Some of the speculative projects become less attractive, and we are hoping by that means to close some of them down.

It is always worth remembering that planning permission does not necessarily mean that a development will take place. The local authority looks purely at the planning aspect; it does not necessarily look at the tenure of the land and whether the applicant owns the land. By making the commission a key agency, we expect that there will be better co-ordination between the local authority and the commission and that, when the commission identifies crofting communities in which there are significant issues, it will work far more proactively with local authorities on the relevant local plans.

At some point this year, I hope to get all the relevant individuals round the table to talk through some of the issues, what the legislation means and how they will handle it.

Alasdair Morgan: A related point that was made to us in Shetland was that it is often inby land, rather than common grazing land, that is zoned for housing. One reason that was suggested to us is that it is more energy efficient to build houses on areas of inby land because they are in better locations—they are south facing and get more sun. Those are, of course, exactly the same conditions that make them the better land for farming, so there is a tension. Some people suggested that there might be a presumption against development on inby land and crofts.

Roseanna Cunningham: That is one thing that I would expect the commission to discuss proactively with local authorities and that I would want to discuss when I have everyone around the table. We should be doing what we can to protect the more valuable croft land and ensure that any development that is considered by everybody to be appropriate—depending on what it is, the provision of extra housing can be considered to be extremely important—should take place on non-croft or lower-quality land. Again, that will need to be part of the commission's proactivity with local authorities and part of the discussion that I have with it about how it proceeds.

Bill Wilson: Simon Fraser noted difficulties with crofting and succession, which I will roughly explain. When a crofter leaves no will or leaves a will in which the bequest is technically invalid, the procedure is that an application must be made to the commission and intimated in the local press, even when the applicant is the surviving spouse. Mr Fraser considered that to be intrusive and rather unnecessary. Do you intend to address that in the bill?

Roseanna Cunningham: No, we are not really considering that. As is obvious, inadvertent intestacy is not confined to crofters—it is a bigger legal issue. The most important piece of advice for anyone is to ensure that they have made appropriate plans. In such circumstances, it is best

to seek legal advice, to ensure that the right thing is done.

Bill Wilson: If I recall correctly, the point was that although advertising is unnecessary under agricultural law, the relevant crofting law is slightly different from that for other land ownership situations. Tidying some aspects would not be difficult.

Roseanna Cunningham: I appreciate Simon Fraser's attempt to use the bill to fix his individual problems. We are considering tidying small aspects, but I am not sure whether the bill will fix the bigger intestacy issue that he raises. I ask Heather Wortley to talk about the technical stuff.

Heather Wortley: Paragraph 2 of schedule 2 to the bill will amend the Succession (Scotland) Act 1964 to restrict the circumstances in which the commission's consent is required to a transfer on intestacy, so the consent procedures and hence the notification procedures will no longer apply to all transfers on intestacy. The procedures will be restricted to what is in effect a relet and will not apply to a transfer to the spouse.

Peter Peacock: Sir Crispin Agnew raised an issue about the commission's tribunal status, to which the minister referred in last week's evidence. As I understand it, he argued that because Crown immunity will be removed from the commission, it will no longer be appropriate for the commission to have tribunal status. That raises two questions. Why is Crown immunity being removed? What is the policy logic behind that?

Roseanna Cunningham: Having heard Crispin Agnew's evidence, we are considering the position. We will examine that aspect, because what he said was compelling.

Peter Peacock: That may be—the legal arguments are intricate. I presume that there was a reason for the commission to have Crown immunity and to be a tribunal. That must have some logic. Do you intend to consider removing that status or will it be kept?

Roseanna Cunningham: We are trying to establish what the logic—if there was any—might have been, because that is not entirely clear. The answer might simply be that it was one of those times when people started a list on which something was inadvertently included.

Peter Peacock: Are you referring to the Crofters (Scotland) Act 1955? The status dates from that time.

Roseanna Cunningham: That is when the commission became a tribunal or was referred to as a tribunal.

Peter Peacock: I am probing because we had an exchange last week about the importance and value of the hearings procedure that the commission operates. I understand that hearings take place under the tribunal status, so I am concerned that a threat to the tribunal status might threaten hearings or the status of decisions. I am concerned that the matter has arisen late and I am anxious about the implications.

Roseanna Cunningham: I, too, am concerned that the issue has arisen late, but we are proactively examining it, having listened to Crispin Agnew's evidence. We need to consider the original logic—if it existed—and whether it applies. We also need to consider the implications of removing the status. I am trying to say that we are not closed to removing it, but you are right that we must be careful not to take it away superficially and to avoid an unforeseen consequence.

12:15

Peter Peacock: Let me be clear. Are you saying that you are considering the issue not necessarily with a view to doing away with tribunal status but with a view to establishing whether tribunal status needs to be maintained?

Roseanna Cunningham: As I said, we must first establish what the logic was to start with.

Peter Peacock: That was helpful.

The Convener: Are the powers in section 32 to make preconsolidation modifications to enactments on crofting appropriate, given that they appear to allow substantive changes to be made to crofting law in future without full parliamentary scrutiny? The Government has agreed to remove similar powers from the Interpretation and Legislative Reform (Scotland) Bill.

Roseanna Cunningham: We think that a special case can be made in respect of crofting. Crofting legislation is complex and cumbersome, as we know, and, where appropriate, it should be dealt with in the fashion that is proposed. That view was reiterated during the consultation. I am content that what is proposed is appropriate, given the circumstances of crofting.

Bill Wilson: Schedule 2 to the 1993 act contains a set of standard conditions of croft tenancy. Condition 11 provides a right for landlords to enter crofts to inspect improvements, including buildings, which might include the crofter's dwelling-place. The crofter might have built their own house, which would have nothing to do with the landlord, but the landlord could insist on their right to enter and inspect the crofter's home. That seems intrusive. Are you considering exempting the dwelling-place from the right of inspection by landlords?

Roseanna Cunningham: All landlords pretty much have the right of entry, whether we are talking about crofting or not. I might be wrong about that, and it is a long time since I studied that aspect of law, but my recollection is that most tenancies, crofting or otherwise, include such a clause. How often the right is exercised is a separate matter entirely.

Bill Wilson: The difference is that normally a landlord would own the building, whereas a crofter might have built his own home. Although the landlord had never had anything to do with the house, which was an improvement by the crofter, he could enter it and insist on inspecting it, even though he had no reasonable right over it whatever.

Roseanna Cunningham: That is the current position. If the committee thinks that it is not appropriate, it can make a recommendation in that regard. However, we should be careful, because there might be valid reasons why a landlord required to inspect the house from time to time. For example, the landlord might be worried about an activity that was taking place within the four walls.

I do not know how often the issue arises. We have not considered changing the approach, because we have had no representations from people who want us to do so. That suggests that the issue has not caused any difficulty. Landlords across the board usually have such a power, and I am not aware of abuses that require to be corrected.

Bill Wilson: We have had one complaint. We can come back to the issue.

Iain Dewar: I think that I am right in saying that statutory condition 11 provides for a right to enter the croft. I am not sure that that includes houses.

Bill Wilson: We know of at least one case in which a crofter strongly objected to the landlord entering their house but nonetheless had to leave the house and allow the landlord to enter it.

Roseanna Cunningham: We have had no communication of any such abuses or complaints. The issue was not raised during the Shucksmith inquiry or the consultation in respect of the bill. I would be concerned to have evidence that it is an issue about which people are genuinely unhappy. No such concern appears to have been expressed.

Bruce Beveridge (Scottish Government Rural Directorate): In the case that Bill Wilson mentioned, the issue might be whether it was legitimate for the landlord to require entry to the croft house. He might have done it, but was he entitled to do it?

Bill Wilson: Apparently he was—that is the legal advice that we have had.

Bruce Beveridge: Really?

Roseanna Cunningham: The issue has not been raised at any point during any of the consultations in respect of crofting legislation. If what Bill Wilson described is happening, I would need to know more about why and in what circumstances, and I would need to know whether there is serious concern about abuse before I made a definitive statement on what should be done.

The Convener: I do not think that we had legal advice on the matter—I just wanted to correct that. We can discuss the issue further.

I thank the minister and her officials for attending the meeting. If issues occur to you after the meeting that you want to share with the committee, please write to the clerks, if possible by Monday 22 March.

That concludes the public part of the meeting. I thank everyone in the public seats for attending.

12:21

Meeting continued in private until 13:02.

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