



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 16 June 2010

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**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
16th Meeting 2010, Session 3**

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Aileen Campbell (South of Scotland) (SNP)
*Karen Gillon (Clydesdale) (Lab)
*Liam McArthur (Orkney) (LD)
*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 ALSO ATTENDED:

Roseanna Cunningham (Minister for Environment)
Rob Gibson (Highlands and Islands) (SNP)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 16 June 2010

[The Convener opened the meeting at 10:03]

Crofting Reform (Scotland) Bill: Stage 2

The Convener (Maureen Watt): Good morning, ladies and gentlemen. I welcome everyone to the committee's 16th meeting in 2010. The main purpose of today's meeting is to consider amendments at stage 2 of the Crofting Reform (Scotland) Bill. Everybody should remember to turn off their mobile phones and brambles, as they impact on the broadcasting system.

Agenda item 1 is consideration of amendments that have been lodged at stage 2. Members should have in front of them their copies of the bill, the marshalled list of amendments and the groupings. I welcome the Minister for Environment and her officials to the meeting.

Section 20—Duties relating to residency, misuse and neglect of crofts

Amendments 19 to 23 moved—[Roseanna Cunningham]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Duties of certain owner- occupiers of crofts

The Convener: The first group is on the definition of "owner-occupier crofter". Amendment 260, in the name of the minister, is grouped with amendments 261, 279, 281 and 282.

The Minister for Environment (Roseanna Cunningham): Amendment 260 will replace the definition of "owner-occupier crofter" in new section 19B of the Crofters (Scotland) Act 1993, which is to be inserted by section 21 of the bill. It clarifies the definition of "owner-occupier crofter" and also provides that it applies to a former crofter's nominee. In addition, the definition will now also include a first-time owner-occupier of a newly constituted croft that has not previously been tenanted. In doing so, it makes reference to a person purchasing a

"croft from the constituting landlord ... or ... such a purchaser's successor".

That will allow an individual to acquire a newly constituted croft and become an owner-occupier crofter where no tenant crofter had previously

been in place. It is envisaged that certain landlords, particularly public bodies, might wish to seek the creation of new crofts to sort out a shortage of crofts in a particular area.

Amendment 261 is consequential on amendment 260 and simply defines "constituting landlord" for the purposes of the new definition. Providing a statutory definition of "owner-occupier crofter" will allow the legislation to apply equally, so far as is necessary, to both tenant and owner-occupier crofters.

Amendments 279 and 282 are also consequential on amendment 260 and will make minor drafting changes to the definition of "owner-occupier crofter" to reflect the drafting changes to the definition in new section 19B of the 1993 act.

Amendment 281 will remove the definition of "owner-occupier's croft" from the interpretation section in the bill, as it is not used in the text of the bill itself but is used in provisions of the bill that will insert text into the 1993 act. There will be a definition in the interpretation section of the 1993 act.

I move amendment 260.

Amendment 260 agreed to.

Amendments 261 and 24 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is entitled "Duty to cultivate or put to other purposeful use every part of croft". Amendment 289, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock (Highlands and Islands) (Lab):

The amendment is on the issue that I raised when the minister lodged some amendments in the first week of stage 2. I will not labour the point, because the minister indicated that part of the previous act was simply being brought into the bill and undertook to consider the matter before we got to stage 3. She may have done so by now. I was going to seek leave to withdraw the amendment, given what she said previously, but if she has anything else to say I would be happy to hear it.

I move amendment 289.

Roseanna Cunningham: I have one or two things to say. Peter Peacock indicated on the first day of stage 2 that he thought it unreasonable to require a crofter to cultivate every part of their croft or to put every part of the croft to purposeful use if it was impossible to do so. He used the example of someone having a large rock in the middle of their croft. Amendment 289 would remove the requirement only from owner-occupiers and not from tenant crofters, which would also require amendment to the new section 5C of the 1993 act,

which was inserted in the bill by an amendment that we considered on the first day of stage 2. As I said previously, the requirement is not something that we have come up with ourselves; we have simply replicated the pre-existing wording, which was inserted into the 1993 act in 2007. The situation is what it has already been, if you like.

However, I agree with the point that Peter Peacock is trying to get at. I am glad that he is considering seeking to withdraw amendment 289, because we want to consider the matter before stage 3. I do not want crofters to have to do the impossible—nobody does—but I am also sure that Peter Peacock does not want to create a provision that might end up being called the “Peacock loophole”, which would let crofters get away with not cultivating their crofts or putting them to purposeful use. A test of reasonableness needs to be applied, which is what we are considering for stage 3. I hope that that is enough for Peter Peacock just now.

John Scott (Ayr) (Con): I very much support the sentiments behind Peter Peacock’s amendment 289. It would be unreasonable to expect to be put to purposeful use areas such as scree slopes or ponds or lochs. There is nothing that one can reasonably do with such areas except look at them—as I have done in my life. I would be grateful if the minister would introduce some reasonable amendments to that effect at stage 3.

The Convener: I think that Peter Peacock and John Scott have expressed the feelings of the whole committee.

I ask Peter Peacock to wind up the debate.

Peter Peacock: There is no need for me to wind up. I accept what the minister has said and I seek leave to withdraw amendment 289.

Amendment 289, by agreement, withdrawn.

Amendments 25 and 26 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is entitled “Applications for registration: duty to apply, sanctions and incentives”. Amendment 196, in the name of the minister, is grouped with amendments 197, 198, 200 to 207, 209 to 212, 215, 88 and 217.

Roseanna Cunningham: The amendments in the group are subsequent to last week’s amendments on registration. The amendments provide the timings for first registration and for subsequent applications to amend the registration details of a registered croft. The effect of the amendments will be broadly analogous to current practice in land registration, in so far as registration will be required in order to give full legal effect to the change being made to the croft

just as registration in the land register is required in order to complete the sale of land.

I would be happy to go through each of the amendments individually, unless committee members are happy for me to stop here.

I move amendment 196.

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 196 agreed to.

Amendment 197 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 197 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 197 agreed to.

Section 21, as amended, agreed to.

Section 22—Consent for absence from croft

Amendments 27 and 28 moved—[Roseanna Cunningham]—and agreed to.

Section 22, as amended, agreed to.

Section 23—Enforcement of duties of crofters and certain owner-occupiers

The Convener: The next group is entitled “Enforcement of duties: publication of criteria”. Amendment 283, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfries) (Lab): At stage 1, the committee considered that the factors that would lead the commission to intervene in cases of absenteeism or neglect are not especially clear and that stakeholders would benefit from greater transparency. For example, the Crofters (Scotland) Act 1993, as amended by the Crofting Reform etc Act 2007, details what landlords can do to terminate tenancies in cases of absenteeism or neglect, but it does not detail what would prompt landlords to take those actions.

The committee’s stage 1 report recommended that the criteria should be published and suggested a number of relevant criteria, such as

“whether the absentee’s croft is being worked ... how long the crofter has been away ... the level of crofting demand within the community”

and so on. We also recommended that

“Such criteria need not be on the face of the Bill, but should be set out in strategic plans of the Commission.”

Amendment 283 would reflect those recommendations by requiring the commission to publish the criteria that it will use to determine whether a crofter is not complying with the duties that are mentioned in sections 5AA or 5B or in sections 19C(2)(a) or (b) of the amended 1993 act. The amendment would also require the crofting commission to consult prior to publication of the criteria, but it would leave it to the commission to determine whom it should consult.

In its response to the committee’s stage 1 report, the Scottish Government stated:

“The Scottish Government agrees ... that, in the interests of transparency, the Commission should publish criteria ... in the Commission’s policy plan. ... The Government ... expects a tougher approach towards absenteeism and neglect”.

Therefore, I hope that the minister will support my approach to ensuring that that happens.

I move amendment 283.

10:15

Peter Peacock: I support Elaine Murray’s amendment 283. At the back end of last week, I received an e-mail from a crofter in which he copied to me correspondence to the Crofters Commission following the current initiative on absenteeism. He is a bit irate about it, and he set out in the e-mail why he is not an absentee. Having read what he wrote, I think that the commission will accept his position, but a lot of his anxiety would have been relieved if there had been clear criteria about how the commission

would ultimately make its judgment. Therefore, in the spirit in which Elaine Murray has put forward her amendment, it would be good to set out the criteria both to inform people about the criteria that the commission will use, and to reassure those who have a reasonable reason for not currently being on their croft that they may have an acceptable argument. I am happy to support Elaine Murray’s amendment.

Roseanna Cunningham: I fear that Elaine Murray’s hopes will be dashed. Amendment 283 would place a statutory obligation on the commission to publish the criteria to be used in determining whether a tenant or owner-occupier crofter is complying with the residency or misuse and neglect duties.

The first point to make is that absenteeism, neglect and misuse are already defined in the bill, and it is relatively clear when the duty has been complied with or breached. The second reason why I think that amendment 283 is unnecessary is that we expect the commission to publish information on when it might not take action—the good reasons for not taking action—in the policy plan that it will have to produce under section 2C. We have therefore already provided for the other side of the coin in section 2C. It would have been interesting to test the set of concerns in Peter Peacock’s e-mail against that, but I ask the committee not to support amendment 283 because in our view it is unnecessary.

Elaine Murray: I note what the minister says and that absenteeism, neglect and misuse are defined, but it is still the case that the criteria that are to be used to make the judgment are not clear. Indeed, as the minister said, the reasons for not taking action are provided for in the bill, but nowhere is there reference to the reasons for taking action. However, I am prepared to seek to withdraw the amendment at this stage in order to consider the issue further. It might be something on which I can have further discussions with the minister.

Amendment 283, by agreement, withdrawn.

The Convener: The next group is entitled “Methods of monitoring compliance with duties etc.” Amendment 284, in the name of Elaine Murray, is grouped with amendments 293 and 278.

Elaine Murray: The committee observed during its visit to Sutherland a circumstance in which a crofter was aware of neglected crofts in the township and was more than prepared to work them herself. She tried to raise the issue through the grazings committee, but it was unsure how to progress her complaint and she did not know how to raise it further.

In the section of our stage 1 report on policing and investigating absenteeism and neglect, the committee observed that the bill has little to say on how cases will come to the attention of the commission. We received mixed views from witnesses. Andrew Thin of Scottish Natural Heritage argued that a statutory duty should be placed on the crofting commission, while Drew Ratter was anxious that the commission should not be required to act as

“a private detective agency ... inspecting 18,000 crofts at regular intervals”.—[*Official Report, Rural Affairs and Environment Committee*, 23 February 2010; c 2459.]

My amendment 284 addresses both concerns. The commission would be placed under a duty to investigate suspected failures to comply with the requirements on absenteeism and neglect, but that would be triggered either by a complaint from the grazings committee or by a petition of at least one third of registered crofters in a crofting township. For example, the grazings committee of the crofter in Sutherland would be empowered to ask the commission to investigate the neglected crofts in which she has an interest without its being obliged to inspect every croft in the township to ascertain which ones are not being tended as they should.

John Scott's amendment 293 has a similar intention to my amendment 283; it would require a checklist on what constitutes neglect to be issued to crofters and it would require crofters to supply the address at which they are ordinarily resident. I am interested to hear more from John Scott about his intentions, as I am quite sympathetic to them.

Rob Gibson's amendment 278 would place a duty on grazings committees to report on the state of the township and on neglected and misused crofts in particular, rather than placing the duty on the commission to act if the grazings committee were to report neglect or absenteeism to it. It could be rather onerous for a grazings committee to do that annually, and it does not address circumstances in which a township does not have a grazings committee. I am interested to hear more from Rob Gibson about the intention behind amendment 278, and I look forward to hearing committee members' views on all the amendments in the group.

I move amendment 284.

John Scott: Amendment 293, in my name, seeks to provide an alternative method of monitoring the compliance of crofters and owner-occupier crofters with their residency duties and their duties to cultivate their crofts or put them to other purposeful uses. The existing agricultural census could provide a vehicle for crofters and owner-occupier crofters to confirm that they are complying with those duties.

In preparing amendment 293, I was advised by the legislation team that I should seek to amend the Agricultural Statistics Act 1979. However, I now understand that the 1979 act does not extend to Scotland, and that my approach should have been to amend the Agriculture Act 1947. That is now clear.

The substance of my amendment remains the same, nonetheless, and I will explain why I favour such an approach. I thank Elaine Murray for her support. The concept is—as we discussed in committee—that crofters would be able to declare on the form that the croft is being put to “purposeful use”.

In addition, crofters would provide the address at which they are ordinarily resident if they do not live on the croft, which would help traceability for registration purposes as well as provide information on whether the crofters live within the 32km zone. It would also be helpful for electoral registration purposes, and it would save the crofting commission expense and would not impose a burden on grazings committees. It would avoid the burden that the amendments in the names of Elaine Murray and Rob Gibson would impose on committees and the commission. It is a low-cost self-monitoring way of addressing absenteeism and neglect.

The Convener: I welcome Rob Gibson to the committee, and ask him to speak to amendment 278.

Rob Gibson (Highlands and Islands) (SNP): Thank you, convener.

Our intention is to ensure that we get rid of neglect and identify absenteeism. The township of Camuscross on Skye produced a detailed report, which identified practices—good and bad—by individuals in the township and by the regulatory authorities. I am concerned when I hear Drew Ratter say that the Crofters Commission is not prepared to act as “a private detective agency”—it should be a public detective agency. However, if the commission is to identify the scale of the task, it needs information to prod it in that direction.

Elaine Murray, John Scott and I have sought to do that by various means. My suggestion, which was discussed briefly at the cross-party group on crofting, involves a simple pro forma that would be provided by the commission to grazings committees to get a report from them. That could be done annually or otherwise; amendment 278 provides for an annual report, but that might prove to be onerous for the commission to deal with. To get a snapshot of where problems are, there must be communication from the crofts to the crofting commission.

To back up amendment 278, I offer the remarks of an east Sutherland crofter, who said:

"I ... stress again that I believe that I have a moral obligation to make good use of the land I have. It infuriates me enormously that people acquire land to gain some sort of perceived 'status' and then do little with it or something which in my opinion is not 'purposeful'. I also think that continuing to take from the land without putting anything back into it or even keeping fences in order is as bad. However the 1993 Act places very clear obligations on crofters in this respect yet nothing appears to be done to address this problem."

That is an eloquent statement from someone who has at heart the best interests of croft land—her own and others'. By activating grazings committees, we would have a means to prod the crofting commission into action. I am interested to hear what the minister has to say about my proposal.

Peter Peacock: The amendments in the group are not mutually exclusive—they could all be agreed to. I like Elaine Murray's approach, partly for the reason that Rob Gibson touched on when he mentioned Camuscross. People in Camuscross were irritated that they had raised with the Crofters Commission their belief about neglect but the commission had not, in their view, taken action. Elaine Murray suggests that, when a grazings committee raises an issue with the commission, the commission should be obliged to investigate that. That would take us forward and that approach would be useful.

Subsection (1)(b) in Elaine Murray's amendment 284 would provide that, if a grazings committee did not raise an issue but at least a third of a community felt that the matter should be raised, the commission would have to take that seriously. I suspect that the minister will say that she would hope that the commission took action even if one person complained—perhaps the amendment's approach to that needs to be considered.

I have some sympathy with John Scott's amendment 293, notwithstanding the fact that he said that the act to which the amendment refers has to be changed. There is something in people self-certifying what they do. That might make a contribution, although it would not obviate the need for other activities.

I was pleased that Rob Gibson said that annual reporting might create a burden on the commission, because I agree. His amendment 278 would not require the commission to take action, even though it would receive a report. About 800 grazings committees exist, so their reporting would involve quite a lot of administration. If Rob Gibson lodged a stage 3 amendment to propose reporting every fourth year or whatever, I would be much happier to consider that, because the idea could make a contribution.

However, as we took evidence and went round crofting communities, the reluctance of communities to report their neighbours and peers

was clear. I fear that, because of that social pressure, communities would say that everything was okay, so they might not report in the way that we envisage. The suggestion has complications, but it is in the same territory as are the proposals from Elaine Murray and John Scott on trying to find a way forward. All the amendments must be considered.

Karen Gillon (Clydesdale) (Lab): When Rob Gibson spoke, I saw a new Alexander McCall Smith novel coming—"The Crofting Detective Agency".

There is something in each amendment. We have examined the issue, which is not easy. However, the argument has another side. The amendments should not be seen as allowing the crofting commission to abdicate its responsibility for actively considering absenteeism and neglect. Peter Peacock is right: we have found resistance to reporting neighbours and communities, because a stigma is attached to that. We must find the right balance. All the amendments would make useful additions.

Through stage 1 discussions, John Scott has convinced me that he suggests a useful addition—a self-reporting mechanism that is not an alternative but is one way of ensuring that people think about what they do.

10:30

Elaine Murray's amendment 284 puts an onus on people to report and on the crofting commission to investigate. I have some concerns about the requirement for one third of the registered crofters in a township to support a petition to investigate; we might need to look at the figures around that.

On Rob Gibson's amendment 278, I agree with Peter Peacock that annual reporting is far too frequent. I have lodged an amendment, which I hope will be agreed to later, that will lay a duty on ministers to report to the Parliament on the state of crofting. It would be useful if we could tie the grazings committee reports down to the year before the reporting process, so that the crofting commission and the minister have some further information on which they can base their reports.

We might need to come back at stage 3 to tie all these things together. Getting something that works for everyone will be positive, as long as we do not take away the crofting commission's responsibility for its role.

Liam McArthur (Orkney) (LD): Throughout stage 1, for all the criticism that we heard in evidence about how the Crofters Commission has been carrying out its duties, or not, a clear view was expressed that the commission needs to be

strengthened and encouraged to take a more proactive role. As others have suggested, each of the three amendments in the group touch on that and seek to address it in some way.

I suspect that the minister will have some problems with amendment 284, although it probably adheres more to the approach that the committee took at stage 1 than do the other amendments in the group. As Peter Peacock suggested, however, the amendments are not necessarily mutually exclusive.

John Scott made a strong argument throughout stage 1, and has done so again today, for the approach that he would like to take. Notwithstanding the obvious point about the Agriculture Act 1947, my concern is how the approach would work in practice. If I recall rightly, during the stage 1 debate, the minister raised concerns about the workload and bureaucracy that could lie behind such an approach. Nevertheless, it has a number of attractions that could, over time, outweigh some of the problems that might arise in the initial stages.

The immediate concern about amendment 278 is the frequency of the requirement. There are concerns about individuals within communities being seen to snoop on their neighbours and raise concerns about them. Nevertheless, if the commission is bound to act, it will need to act on information that is brought to it, and one of the ways of doing that will be through the grazings committee. If the timeframe for that can be worked out, it looks as if it will strengthen the approach that each of the amendments is trying to achieve.

The Convener: Minister, how do you steer a course through all that?

Roseanna Cunningham: I should say at the outset that I appreciate the intentions behind the amendments. As members have indicated, we are trying to get to the same outcome. My difficulty is that none of the amendments quite does what it says on the tin, so I ask for them to be withdrawn or not moved, not to see the end of the issue, but to see whether we can come up with something better at stage 3 that will achieve what we are all trying to achieve. We need to ensure that the commission gets the information that it needs to be able to address absenteeism, neglect and misuse, and we need to ensure that the commission acts on that information.

My fear is that amendment 284 would lead to realising some of the concerns that Peter Peacock expressed during stage 1. If the commission is made aware of a breach of duty, it will investigate it, and if it considers that the duty is being breached, the bill requires it to give the relevant person a written notice. It will be able to deal with reports of breaches of duties systematically,

according to the resources that are at its disposal. Imposing a specific duty on the commission to investigate every suspected failure on receipt of a request could overwhelm it and result in it breaching that duty. It would be much more sensible to let the commission manage the workload.

I am also unclear as to why a request would have to be made by a grazings committee or by petition. That might begin to be burdensome and bureaucratic. At present, any single member of a crofting community can make a complaint to the commission in respect of misuse or neglect. That has resulted in two cases since 2007, as we heard. I will come back to the issues that members have raised on crofters' concerns about that.

Amendment 284 would attach unnecessary strings to the circumstances under which the commission would have to investigate. We do not want to do that inadvertently and to tie the commission's hands. We want to give the commission greater freedom to tackle issues. For those reasons, I urge Elaine Murray to withdraw amendment 284. However, I do not give those reasons as fatal to the amendment's intent and purpose.

I turn to amendment 278 in the name of Rob Gibson. All committee members have probably read the report on the state of crofting in Camuscross and would agree that it was an excellent case study of some of the regulatory issues that that township faced. The report identified neglected crofts as well as crofts with absentee tenants. It went further and pointed out demand within the township for crofts, which was an interesting aspect that is not always reported on at that level.

Reports that contained that kind of information for every township would of course be useful for the commission and would help it to identify possible cases of absenteeism, neglect and misuse for investigation. That would go some way to delivering John Scott's desire for crofters to undertake a level of self-assessment. However, I have reservations about Rob Gibson's amendment. For example, it would require grazings committees to report annually on the state of their township, and, in particular, on whether any croft was neglected or misused. This might sound a little pedantic—although laws have to be pedantic for good reasons—but it would be better if the requirement was to report on the state of crofting in a township and not on any matter related to the township, which is how the amendment could be construed.

Further, I believe strongly that the requirement to report annually would be overly burdensome for grazings committees. Frankly, that is just too frequent. Perhaps a five-yearly report would be

more proportionate and would give the commission time to do something with the reports. There are about 850 grazings committees so, in theory, the commission would receive up to 850 reports every year. I fear that those reports would simply go on a shelf and would never be looked at because there would be insufficient resources to do that. It would then become a pointless exercise. I am attracted to the idea, but the present drafting is a little disproportionate.

I would not expect every grazings committee to produce a Camuscross-style report. I would certainly want the commission to develop a lighter-touch proforma that grazings committees could complete to report on the state of the crofts and common grazings in a township. That would include information on issues such as the waiting list and how many people were trying to get into crofting.

I appreciate Peter Peacock's point that all the amendments could be agreed to and that they are not mutually exclusive. However, if we accepted amendment 278 along with Elaine Murray's amendment 284, under which every issue would have to be investigated on receipt of a request, the commission could end up with 800 or so reports coming in every year reporting a significant number of breaches of the duty. The whole process would collapse under the weight of that.

We must be mindful of the local assessors, whose role is to assist the commission in the exercise of its functions. That might include reporting breaches of duties as well as commenting on regulatory applications. On balance, a joined-up approach between grazings committees, local assessors and the community to identify absenteeism, misuse and neglect would benefit crofting. Rob Gibson's amendment makes no mention of grazings constables. Elaine Murray made a good point that not all townships have grazings committees—some have grazings constables and some might have neither, so we would need to try to find ways of including such townships. If we were to go for a five-yearly assessment, we would like to have something fairly quickly to provide an early benchmark. It is important to say something about that early timing.

Although I see merit in Rob Gibson's amendment 278, I hope that he will understand why I ask him not to move it, so that we can try to come back with something at stage 3.

One or two members made the point about crofters' concern about clyping on their neighbours. However, through the reporting mechanism, it will be possible for a grazings committee to report that there are three, four or five absentees or that there are two or three crofts that they consider to be neglected, without necessarily naming individuals. Such a report

would alert the commission to the potential problem that was developing and allow it to undertake the investigatory role that Karen Gillon is concerned that it must not ignore but be proactive in undertaking. There is a way of making the system work better.

John Scott has pre-empted the debate on amendment 293 by making the basic point that needs to be made about the Agricultural Statistics Act 1979 not extending to Scotland. Nonetheless, I understand what he is trying to do. We have discussed the idea of crofters making some form of declaration, as part of a self-regulatory approach, but the agricultural census is not the place for such a declaration. Its function is to collect statistics and is not to do with compliance. Only in exceptional circumstances is it possible to get data on individuals by using the census, because anonymity is a central principle and all data are aggregated prior to release.

I agree with John Scott that it is important that there is a clear means of reporting breaches of duties to the commission. Better use could be made of the existing data that the Government holds from, for example, subsidy claims, to ascertain whether crofters are complying with their duties. Any crofter who makes a subsidy claim must meet the cross-compliance criteria, which means that, in effect, they make a declaration that they are not misusing or neglecting their croft.

Perhaps more could be done to make better use of information that we have from the wide range of Scotland's environment and rural services agencies and from agricultural area offices, to identify people who are not meeting their responsibilities to live on or near the croft and work the land.

John Scott: I appreciate that the agricultural census is an information-gathering tool. Nonetheless, a person's name is clearly on the form when they return it to the Scottish Government's directorate for rural and environment research and analysis. If a tear-off strip was provided on the form, the statistical information could easily be gathered and the information that was required for self-certification could be returned to the crofting commission for it to inspect at its choice—there would be 15,000 or so forms.

The point of such an approach is that if a crofter had put their signature to such a declaration they would be worried about being inspected and they would be more likely to comply. We would not have to depend on grazings committees plucking up the courage to report non-compliance in cases of absenteeism and neglect. There is a real danger in that regard. I support the principle behind the other amendments in the group, but the evidence that we have taken suggests that

grazings committees would be reluctant to judge people. The route that I am proposing should therefore be pursued.

Roseanna Cunningham: I hear what you are saying, but the issue is not as simple as you suggest that it is. I want to bring together the good intent of the three members who lodged the amendments in the group and to try to come up with something that achieves more practically and effectively what I think that you all want to achieve. After all, the proposal in amendment 278, which Rob Gibson lodged, is also for a form of self-regulation, albeit different from the approach that John Scott proposed. I ask John Scott not to move amendment 293, not just because it is outwith the competence of the Parliament, which is a fundamental objection, but because there are better approaches than one that uses the agricultural census.

Given my remarks, I hope that members will realise that we have thought carefully about all three amendments. The Government's intention is to find the right way of achieving the right outcome. I ask Elaine Murray to withdraw amendment 284, I ask John Scott and Rob Gibson not to move amendments 293 and 278, and I invite members to collaborate—I know that that is sometimes difficult, but in this case it might be appropriate—and to talk to us, to ascertain whether there is a better way forward.

I advise members that the Government has to lodge amendments for stage 3 by next Thursday. Members have until Friday to lodge non-Government amendments—non-Government amendments have a day longer—and we would have to have an amendment in by the stage 3 deadline. It would be useful to do that in collaboration to see whether we can bring all the ideas together and find a better way of achieving what we want to achieve.

10:45

Elaine Murray: It is clear that there are three slightly different amendments with the same ultimate intention. I note that there are problems with each of them.

The reason that my amendment 284 requires a minimum of one third of the registered crofters in the township to support a petition is to try to prevent vexatious reporting. There is no particular evidence of that in crofting communities, but we have all dealt with neighbour disputes in our communities in which people continue to complain about their neighbours to the police and elected representatives. The commission should be required to act only if the concern is genuine and shared by the wider community, rather than coming from one individual who does not get on

with their neighbour and is trying to make trouble for them.

I am happy to withdraw my amendment in the hope of finding a way forward that embraces the intentions of the three amendments but manages to avoid some of their pitfalls. I note what the minister said about the timescale. That is the first time that I have appreciated how strapped for time we will be for stage 3 amendments. In those circumstances, we should work with the Government on any potential issues if possible. The bill team has the experience to be able to come up with a solution that embraces what we are all trying to do. That might be the only way to avoid stage 3 amendments with pitfalls similar to those that are before us today.

Amendment 284, by agreement, withdrawn.

Amendments 29 and 30 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on compliance with duties where the croft is sublet or let. Amendment 262, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: I will be mercifully brief. Amendment 262 is a technical amendment. It provides that a tenant or owner-occupier crofter is deemed to comply with the duties imposed upon them, other than the duty not to misuse the croft, if those duties are complied with by the crofter's subtenant or the owner-occupier's tenant.

I move amendment 262.

Amendment 262 agreed to.

The Convener: The next group is on appeals against division. Amendment 263, in the name of the minister, is grouped with amendments 266 to 270.

Roseanna Cunningham: Amendment 263 restricts the application of the definition of "relevant person" in proposed new section 26A(2) of the 1993 act to avoid any potential confusion, as the act already contains a definition of "relevant person".

Amendment 266 provides for a new right of appeal to the Scottish Land Court by a crofter or owner-occupier crofter against a decision by the commission under proposed new section 26B(5) of the 1993 act that a duty is not being complied with. Amendments 267 and 268 are consequential on amendment 266.

Amendment 269 clarifies that a right of appeal under proposed new section 26K(2) of the 1993 act against the commission's termination of a crofter's tenancy or its requirement for letting proposals to be submitted in respect of an owner-occupier's croft may include an appeal against the commission's prior division of the croft or owner-

occupied croft under proposed new section 26G of the 1993 act.

Amendment 270 confers a power upon the Land Court to instruct the keeper of the registers of Scotland to rectify the crofting register following a decision of the court arising from an appeal under new section 26K(2)—an appeal against the commission's order to terminate the crofter's tenancy or its requirement for letting proposals for an owner-occupied croft, which may include an appeal against any prior division of the croft.

Amendment 270 is consistent with amendment 218, which inserted the same power in section 52A of the 1993 act, to which the committee agreed during its discussion of the register last week.

I move amendment 263.

Amendment 263 agreed to.

Amendment 31 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on enforcement of duties: notice to landlord. Amendment 290, in the name of John Scott, is grouped with amendments 291 and 292.

John Scott: Amendment 290 would require the commission to send a copy of an enforcement notice to the landlord when it relates to breach of the new duties in the context of a tenanted croft. It is not unreasonable that a landlord should be informed when enforcement action is taken against a crofter, given that the landlord has an interest in the croft and could take action if the crofter fails to comply with the duties in new sections 5B and 5C of the 1993 act. The purpose of amendment 290 is to ensure communication between all the parties involved. Although there is no amendment to this effect, it would be equally reasonable to expect the landlord to notify the commission if it made an application to terminate the tenancy under section 26 of the 1993 act.

Amendment 291 would require a copy of any notice that gave a crofter an opportunity to give an undertaking under section 26C of the 1993 act to be sent to the landlord. It simply seeks to ensure that communication takes place between the commission and the landlord, and that the landlord is kept up to date.

Amendment 292 is a similar amendment, which would require the landlord to be sent a copy of a notice of division. Again, it is not unreasonable for a landlord to be notified when a croft in which he has an interest is divided.

I move amendment 290.

Roseanna Cunningham: I have no difficulties with Mr Scott's amendments 290, 291 and 292. As he indicated, they seek to include the landlord in

the process relating to the new enforcement provisions in section 23, which seems reasonable to me.

However, I note that amendment 292 relates to a division that is made under new section 26G(1), which refers to tenant and owner-occupier crofters. As there will be no landlord with an owner-occupier's croft, I support the amendment on the basis that Mr Scott will support a further Government amendment at stage 3 to clarify that the proposed provision relates only to tenanted crofts.

John Scott: It's a deal.

Amendment 290 agreed to.

The Convener: The next group is on circumstances in which the commission must be satisfied about the use of a croft for conservation purposes. Amendment 285, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Section 20 states that crofters who refrain from

"an activity for the purpose of conserving ... the natural beauty of the locality ... or the flora and fauna of that locality"

are not misusing or neglecting their croft. At stage 1, the bill team explained that the bill was more restrictive than the current legislation in that regard, but concerns still exist that conservation could be used as an excuse by a crofter who was neglecting their croft. Such a crofter could argue, for example, that they had observed some rare species of butterfly in the locality, the habitat of which might be disturbed. Andrew Thin of Scottish Natural Heritage was worried that the concept of conserving natural beauty was highly subjective and that the provision could be "a charter for lawyers". We know what sort of mischief lawyers can inflict.

The intention of amendment 285 is to close any potential loopholes by requiring the crofter to provide evidence of planning and management in relation to the activity that is being engaged in or refrained from, and to provide evidence that engaging in or refraining from the activity is recognised to contribute to conservation by an approved conservation body such as SNH, RSPB Scotland or whatever conservation organisation is best qualified to advise. The commission must not decide that a breach of duty has occurred without allowing representations to be made, but those representations must fulfil certain criteria with regard to planning and management and recognised conservation purposes.

I move amendment 285.

Roseanna Cunningham: Amendment 285 places a burden on crofters by requiring them to

demonstrate that they have engaged in or refrained from an activity for conservation purposes approved by a conservation body that is approved by the commission.

Under the bill at present, using the croft for conservation purposes is not misuse or neglect if it is being done in a planned and managed manner and to the satisfaction of the commission. Amendment 285 would require every crofter who wishes to engage in conservation to have a plan that is approved by an approved body, which strikes me as moving in the direction of over-bureaucratisation and as being, therefore, unnecessary. I think that it is enough for any person who is challenged by the commission to simply have to provide evidence that they are proceeding in a planned and managed manner. I do not think that it should be necessary for them to have to get a pre-approval from a conservation body before proceeding in such a way. In most cases, such activity probably will involve some scheme, particularly if it is being publicly funded, but that might not necessarily be the case.

For example, given his academic background, if Bill Wilson, a member of this committee, decided to get into crofting, he would be more than capable of developing his own plan for conservation on his croft without having to have it cleared by SNH.

Bill Wilson (West of Scotland) (SNP): I hope that that is not a hint.

Roseanna Cunningham: Also, by amending the new section 26B, rather than the duties themselves, this amendment would mean that the commission would be required to take enforcement action before the plan came to light. Therefore, as well as being bureaucratic, amendment 285 is almost unworkable.

I encourage the committee to reject amendment 285, if Elaine Murray is not prepared to withdraw it.

Elaine Murray: I have a slight disagreement with the minister on where the amendment places the duty. My reading of it is that the duty to seek the advice of appropriate conservation bodies when deciding whether the duties were not being complied with would be placed on the commission, not the crofter—that was my suggestion to members of the bill team when I discussed the amendment with them. My original wording was made much more sophisticated by people who know more about these things than I do.

Given that there are some concerns that the duty might be placed on the crofter, I am happy to withdraw the amendment and consider the matter further, although the timescale is restricted.

It might be that Bill Wilson is capable of drafting his own plans, given his academic background

but, if I went into crofting, I do not think that I would have the necessary background to do that without seeking advice or without the commission needing to seek advice about my decisions, and I am sure that that will be the case for most people. However, I seek leave to withdraw the amendment.

Amendment 285, by agreement, withdrawn.

Amendment 32 moved—[Roseanna Cunningham]—and agreed to.

Amendment 291 moved—[John Scott]—and agreed to.

Amendment 33 moved—[Roseanna Cunningham]—and agreed to.

11:00

The Convener: The next group is on the division of a croft before taking further enforcement action. Amendment 264, in the name of the minister, is grouped with amendment 265.

Roseanna Cunningham: Amendments 264 and 265 are minor amendments to simplify proposed new section 26G of the 1993 act, which is to be inserted by section 23 of the bill. The amendments clarify that the crofting commission may divide the croft prior to terminating the crofter's tenancy, or letting an owner-occupied croft, if it is satisfied that it is fair to do so and that, in reaching that assessment, it has had regard to the factors that are listed in new section 26G(2). The amendments clarify that the matters that are listed in section 26G(2) are factors to be considered in assessing the fairness of any prior division of the croft, rather than conditions to be fulfilled.

I move amendment 264.

Amendment 264 agreed to.

Amendments 265, 198 and 199 moved—[Roseanna Cunningham].

The Convener: Does anyone object to considering those amendments en bloc? There being no objection, the question is, that amendments 265, 198 and 199 be agreed to. Are we agreed?

Karen Gillon: Convener, we object to the amendments being considered en bloc.

The Convener: I beg your pardon. I will start with the question on amendment 265.

Amendment 265 agreed to.

The Convener: The question is, that amendment 198 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 198 agreed to.

The Convener: We come to amendment 199.

Roseanna Cunningham: Convener, I moved the three amendments en bloc, but a single question on them was rejected. Do I not have to move them individually?

The Convener: I beg your pardon; yes, you do. I hope that you were in favour of moving those that we have voted on.

Amendment 199 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 199 agreed to.

Amendment 292 moved—[John Scott]—and agreed to.

Amendment 34 moved—[Roseanna Cunningham]—and agreed to.

Amendment 200 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 200 agreed to.

Amendment 201 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 201 agreed to.

Amendments 266 to 269, 35 and 36 moved—[Roseanna Cunningham]—and agreed to.

Amendment 270 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 270 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Watt, Maureen (North East Scotland) (SNP)
 Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 270 agreed to.

Section 23, as amended, agreed to.

11:05

Meeting suspended.

11:10

On resuming—

Section 24—Letting of owner-occupied crofts

Amendment 202 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 202 agreed to.

Section 24, as amended, agreed to.

Before section 32

The Convener: The next group is on Scottish ministers' duty to report. Amendment 73, in the name of Karen Gillon, is the only amendment in the group.

Karen Gillon: It would be fair to say that few on this committee had had much involvement with crofting before we began our consideration of the bill and that the issue was not very high on our list of priorities. However, as we have visited the crofting counties, we have become more aware of crofting's vital role in Scotland; it is a unique form of land tenure that has served us well for many years and has helped to retain populations in some of our most fragile and remote communities.

With those visits, we have also gained a far better understanding of how different crofting communities are facing changing economic situations and, indeed, learned just how important

the overall economic situation is to crofting. A crofter's inability to get a job has a huge impact on their ability to live on their croft and run it effectively and is often a key factor in neglect and absenteeism.

If Parliament is serious about its role in enabling the future viability of crofting, members must be fully engaged with it and aware of the facts. As a result, amendment 73 seeks to place on ministers the duty to lay before the Scottish Parliament once every four years a report on the economic condition of crofting and the measures to support crofting that the Government and the crofting commission have taken over that reporting period. That would place those facts in Parliament's hands and allow it to fully consider crofting's development, any constraints that are on it and the support that the Government and the commission have been giving.

If the committee agrees to amendment 73, I will want to come back at stage 3 with an amendment placing a duty on a committee of the Parliament to examine and do something with the proposed report. I am not sure how that would be done—I have not thought it through exactly—but I think that, if we are going to have this kind of report and if we are serious about what it can do, it would be useful to have a mechanism for allowing Parliament to consider it to ensure that it is a meaningful document and not something that sits on a shelf in the Scottish Parliament information centre.

I move amendment 73.

Roseanna Cunningham: As Karen Gillon has indicated, amendment 73 in effect seeks to impose a four-yearly obligation on Scottish ministers to report to the Scottish Parliament on the economic condition of crofting and the measures taken by the Government and the commission to support it. However, by agreeing to section 2, the committee has already agreed to insert section 2B into the 1993 act, which requires the commission to produce an annual report containing an assessment of the issues affecting crofting communities and Scottish ministers to lay a copy of that annual report before the Scottish Parliament.

The annual report is likely to include an assessment of any significant economic difficulties that crofting communities are facing and the measures that are being taken to support crofting. In addition, before making an annual report, the commission is required to consult HIE and relevant local authorities. In the circumstances, amendment 73 is not necessary and I urge members to reject it because of the additional bureaucracy that it would create.

11:15

I cannot really comment on Karen Gillon's suggestion that a committee be required to look at the annual reports or the four-yearly reports or whatever—I am not sure which she was talking about. However, I am not sure that the Parliament can start mandating what committee business is and is not, because if that approach were taken for one report, it would have to be taken for any number of others. I just wonder how competent that would be.

Karen Gillon: I hear what the minister is saying, but I think that the four-yearly report would be slightly different, because it would be about what else the Scottish Government and the commission had done. It would cover the time period since the elections and would set out what the commission had done in that period, what the Government was doing and the overall economic situation of crofting. I understand that there will be an annual report, but I think that that is slightly different. For those reasons, I will press amendment 73, because we cannot allow crofting to be put on to the back burner again, to be discussed only when we are dealing with legislation—it is far more important than that. If we place the duty that I have suggested on ministers, we might just put crofting on the agenda at least once every four years.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 73 disagreed to.

The Convener: Does Liam McArthur want to move amendment 74?

Liam McArthur: Casting my mind back, I think that the minister indicated on the first day of stage 2 that she foresaw problems with the way that the amendment was cast, that the issues behind it were not as serious as had been suggested and that a collaborative approach was being adopted. I will review what she said and consider potential

alternative wording for stage 3. I will not move amendment 74 at this stage.

Amendment 74 not moved.

Section 32 agreed to.

Section 33—Subordinate legislation

The Convener: Group 12 is on pre-consolidation modifications and modifications of commission functions: parliamentary procedure. Amendment 286, in the name of Karen Gillon, is grouped with amendment 287.

Karen Gillon: Amendment 286 relates to a pre-consolidation order and would put in the bill super-affirmative procedures for the consideration of any subordinate legislation that relates to it. It is a pretty straightforward amendment, which would aid transparency and give Parliament its full place in the process in which ministers are taking very wide powers, particularly in relation to the consolidation of existing legislation. It is the right thing for Parliament to do. Super-affirmative procedures are part of our parliamentary process. The Government has previously signed up to their use and I hope that members feel able to support amendment 286, in my name, and amendment 287, in the name of Elaine Murray.

I move amendment 286.

Elaine Murray: The wording in amendment 286 is identical to that in amendment 287. When I spotted that, I had a moment of fright, as I thought that we had both lodged the same amendment. However, amendment 287 applies to a different section of the bill: section 2, which gives ministers the power to confer functions on, remove functions from or modify the functions of the crofting commission by order. The Subordinate Legislation Committee believes that that is probably unnecessary, because of the general powers of ministers to amend the functions of public bodies by order contained in the Public Services Reform (Scotland) Act 2010. The Scottish Government argued in response that the provisions of that act are for the general purpose of improving the exercise of public functions and reducing or removing burdens in existing legislation, whereas the powers in section 2(2) are specific and narrower and are subject to specific criteria.

Although the minister advised me during previous evidence taking that she had no intention of changing the functions of the commission further, I remain concerned that the bill as drafted enables significant changes to the functions of the commission to be introduced by some future unscrupulous minister without sufficient opportunity for parliamentary scrutiny.

Amendments 287 and 286 mirror the super-affirmative procedure that was introduced by the

Cabinet Secretary for Finance and Sustainable Growth during the passage of the Public Services Reform (Scotland) Act 2010 by requiring a draft of the proposed order to be laid before Parliament with an explanatory document for a period of 60 days, during which period public consultation can take place and the relevant committee can consider the order. Thereafter, a final version of the order would be placed before Parliament and would be subject to the affirmative procedure, thereby enabling the order to be amended. Both amendments are in line with the Subordinate Legislation Committee's recommendation that, if the provision is retained, the order should be subject to the super-affirmative procedure. In its stage 1 report, the Rural Affairs and Environment Committee also invited the Scottish Government to consider that.

Roseanna Cunningham: Amendment 286, which is on pre-consolidation modifications, provides for a copy of a draft order under section 32(1) to be laid and consulted on at least 60 days before the draft order is laid for Parliament's approval. I think that the affirmative procedure would provide the Parliament with sufficient scrutiny of section 32(1) orders, but I can see the arguments for applying what is often called the super-affirmative procedure in this case, given that the power could be used to make changes to crofting legislation that it would not be possible to make in a consolidation bill.

However, the same cannot be said for amendment 287. I have difficulty with applying the extended procedure to orders that would simply modify the functions of an administrative body—in this case, the crofting commission. As legislators, we must be careful when it comes to applying the super-affirmative procedure, as there is a danger that we will end up applying it in situations in which it is not necessary and does not add anything to the opportunity for scrutiny that the affirmative procedure provides. I suggest that the orders to which amendments 286 and 287 refer are good examples of situations in which the procedure might and might not be appropriate. An order under amendment 286 would be a wide-ranging power to amend primary legislation that would cover the whole of crofting law. It would, for example, be needed to facilitate a proper consolidation of crofting law. However, the sorts of changes that can be made in a consolidation bill are limited. Such a bill can only restate the existing law. An order under section 32 is really an alternative to having another crofting amendment bill, which is why I am inclined to accept the super-affirmative procedure in this case.

However, the power that is contained in an order under section 2, to which amendment 287 applies, relates specifically to the functions of an administrative body and is not as wide ranging. It

is clear that there is a big difference in how wide-ranging the powers are; there is a big difference between the power to modify the commission's functions and either the pre-consolidation power or the wide-ranging power that is contained in the Public Services Reform (Scotland) Act 2010. For that reason, I believe that the usual affirmative procedure rather than the exceptional super-affirmative procedure will provide Parliament with the necessary scrutiny that it requires in respect of modifying the commission's functions.

Elaine Murray: I seek an assurance from the minister that, in all cases involving the modification of the functions of the commission, the conferring of functions on it or the transferring of functions from it, orders would be subject to the affirmative procedure.

Roseanna Cunningham: Yes. Any attempt to modify the commission's main functions would have to be made through the affirmative procedure. If a modification was proposed so that one form instead of another form would have to be issued or whatever, that would not necessarily need to be dealt with through the affirmative procedure, but we are talking about the commission's functions, and the affirmative procedure would have to be used. There is more detail on that in schedule 2. There is a difference between the bigger, overarching issue that has been raised in respect of amendment 286 and the smaller—I will not say "more routine", as it is obviously not likely to be that routine—approach that is taken to modifying an administrative body's functions. All that we are saying is that the affirmative procedure will apply with regard to the administrative body's functions.

I will conclude. I am happy to support amendment 286, but I urge members to reject amendment 287 before we begin to grind to a halt under the weight of statutory instruments that are subject to the new super-affirmative procedure.

The Convener: I ask Karen Gillon to wind up and to press or withdraw amendment 286.

Karen Gillon: I welcome what the minister said. I think that the committee wanted to see in the bill what amendment 286 proposes. On amendment 287, we may want to see in the bill something that says that any changes to function would be subject to the affirmative procedure, so we may want to look at that ahead of stage 3. However, I am very happy with what the minister said, and I will press amendment 286.

Amendment 286 agreed to.

Section 33, as amended, agreed to.

Sections 34 and 35 agreed to.

Schedule 2—Minor and consequential modifications

Amendment 37 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on succession to crofts. Amendment 271, in the name of the minister, is grouped with amendments 272 and 208.

Roseanna Cunningham: This group of amendments relates to succession, which we debated previously during the first stage 2 meeting. Amendment 271 is consequential on amendment 272, which repeals the whole of section 16A of the Succession (Scotland) Act 1964. Section 16A of the 1964 act is no longer needed because we have removed the requirement for the consent of the Crofting Commission to any transfer of the tenancy of a croft on intestacy under section 16 of the 1964 act. Amendment 208 responds to concerns raised at stage 1 and requires an executor to notify the commission at the same time as notifying a landlord of the particulars of a transferee when the tenancy of the croft is transferred on the intestacy of a deceased crofter. The transfer of the croft will take effect on the date of registration following an application being made for the first registration of an unregistered croft or to amend the registration details of a registered croft. The amendment also increases the time period within which the executor must notify the landlord and commission of the transfer of the tenancy from 12 to 24 months. If no notice has been given at the end of that period, the commission can propose to terminate the tenancy and declare the croft vacant.

I move amendment 271.

Amendment 271 agreed to.

Amendment 272 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Amendment 293, in the name of John Scott, has already been debated with amendment 284. Does John Scott wish to move amendment 293?

John Scott: I will not move amendment 293, but I will take up the minister's offer of making available her bill team to help to deliver the intentions behind amendments 284, 278 and 293. Could we have a meeting to discuss and create a mutually agreed amendment?

Roseanna Cunningham: Yes.

Amendment 293 not moved.

Amendment 75 moved—[Peter Peacock].

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 75 disagreed to.

The Convener: I cannot call amendments 203, 38 and 204 en bloc, because of an objection to my doing so.

Amendment 203 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 203 agreed to.

Amendment 38 moved—[Roseanna Cunningham]—and agreed to.

Amendment 204 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 204 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
 McArthur, Liam (Orkney) (LD)
 Murray, Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 204 agreed to.

11:30

The Convener: The next group is on assignation to non-family members—duty to consult landlord. Amendment 294, in the name of John Scott, is the only member in the group.

John Scott: Although the committee was not able last week to accept Peter Peacock's amendment on family assignation, in my view the principle of what he was trying to do was sound. Amendment 294 seeks by another route to preserve in some small way different treatment of the family in assignations of croft tenancies, which is a principle that many crofters and landlords hold dear. The amendment also attempts to preserve the principle that the croft tenancy was created with a particular family, so when it is assigned outwith that family there should be some additional scrutiny.

Although I accept that the commission now acts in the place of the landlord in most respects, there would be benefit in requiring the commission at least to consult the landlord in the case of an application for non-family assignation. That would recognise the special place of the family link in the crofting community. It would not be unduly burdensome on the commission, nor would it give the landlord any power or right; it would merely provide an opportunity for him to give his views.

The amendment would benefit community owners who wish to ensure that family links in their communities are preserved; many private owners have similar concerns. If an owner has no strong feelings about the matter, consulting him would not prevent the commission from going ahead with consenting to an application, so there would be no real losers.

I move amendment 294.

Peter Peacock: I want to correct something that John Scott said, and make a comment. I withdrew my amendment on succession at the previous meeting partly in the hope of accommodating an issue that arose in the debate by lodging an amendment at stage 3, which I still intend to do. Since the previous meeting I have reflected on the matter, and I wonder whether—to pick up John Scott's point about additional scrutiny when the family link to which he refers is broken at any point—some simple appeal procedure might be possible, but I am still considering that.

At one level, John Scott is right to talk about the importance of the family link, and it sounds entirely reasonable and innocuous to do what he suggests. However, there is a feudalism about it that slightly grates, although I know he will not agree. I am therefore reluctant to support amendment 294, especially given that I hope to address the issue of principle at stage 3.

Karen Gillon: When I first read amendment 294, I thought that it was simple and straightforward. However, the more I consider it, the more I wonder what the issue of who a crofter assigns his crofts to has to do with the landlord. The commission is the right body to look at that.

The issues that we have discussed relate to people who continue to be absent, and the commission would examine that problem and deal with it appropriately. We have moved away from feudal tenure in Scotland and from that type of imposition on tenants, so I am concerned that what is proposed in the amendment would be a retrograde step.

I would like to hear from John Scott about the circumstances in which it would be relevant for the landowner to be consulted. What type of people is he trying to prevent from being crofters? Ultimately, there are regulations that relate to crofting, and the commission is the right body to address the issue of whether crofters comply with those. I want to know what added value the amendment provides.

John Scott: My concern is that, in a worst-case scenario, a crofter might fall out with a landlord—which can happen—and a vexatious assignation would be made. Further, there might be a danger of assigning a croft to someone whose views were not compatible with those of a private or community landlord. The amendment would add a further level of scrutiny to an assignation.

Karen Gillon: Talk of views that are not

“compatible with those of a ... landlord”

raises serious concerns. Anybody has the right to be a crofter. It is for the crofting commission to determine whether a person can comply with the regulations; it is not for anybody to decide whether the person is compatible. What does compatible mean? Does it mean that a person wears the right colour of clothes? Compatibility is a subjective judgment.

Under the crofting commission, there will be rules on who can and cannot croft. If somebody complies with those rules, it is not for any landlord to say that they are unsuitable. It will be for the crofting commission to determine, under the rules, whether an assignation can take place. This is a very difficult amendment, and I cannot support it.

Elaine Murray: Now that John Scott has described it, I think that I recognise the case that he is referring to—a case in Caithness in which a croft had been assigned to somebody who neglected it. In that instance, the landlord was obviously concerned about the neglect of the croft, but I do not think that it is the landlord's place to report that. The procedures that we are introducing to deal with neglect should deal with people who neglect crofts, such as the crofter in that case. It is not really for the landlord to make that decision; it is something that regulations should be able to deal with.

John Scott: I am not suggesting that a landlord—

The Convener: You can deal with the point in your summing up.

John Scott: Sorry.

Liam McArthur: The debate has been helpful. When we see amendments for the first time, it is often difficult to grasp fully the intention behind them. John Scott has identified instances in which problems may emerge, but we have to trust the powers and functions that we are investing in the commission. It may seek the views of landlords and others in carrying out its investigations, but amendment 294 smacks of a return to feudal tenure, so I hope that John Scott will seek to withdraw it. Either way, I will certainly not support it.

Roseanna Cunningham: As indicated, amendment 294 would require the commission to consult landlords when crofters apply to assign a croft to a non-family member. Section 58A(3)(b) of the 1993 act already provides that the landlord must receive written notification that the crofter has applied to the commission to assign the croft, whether to a family member or to a non-family member. Public notification must also be made of the application. Having received written notification of the application and following public notification, the landlord will be able to object, like any other person, if they so wish.

Behind the amendment seems to be the interesting idea that, because notification is not sufficient, the commission must actively consult a landlord. Even if the landlord was not that bothered, the commission would still have to go through the motions of doing that. I am not sure that that is necessary.

There is also a point that people have perhaps not spotted. We have talked about private and community landlords, and there is a tendency to forget that the Government is itself a landlord. Under the present legislation we would be notified if it was proposed to assign any croft of which we were the landlord. Would we really have to be consulted, and how on earth would that

consultation take place? Effectively, the commission would have to consult the Government about a proposed assignation. The amendment has ramifications that I suspect have not really been thought through.

The whole process is unnecessary, given the existing notification procedures, which have been in place since 1993. A landlord should not be unaware that an assignation is to be proposed, and in those circumstances they can take a view one way or another and become actively involved if they choose to do so.

It would be unfair to treat family and non-family assignations differently, for a whole load of reasons. The same regulatory process should apply to all assignations. I say in passing that Karen Gillon's rhetorical question about what kind of people we are trying to prevent from being crofters is just as relevant to family assignations as it is to non-family assignations.

For all those reasons, I ask the committee to reject amendment 294.

The Convener: I ask John Scott to wind up the debate and to press or withdraw amendment 294.

John Scott: In the face of such overwhelming opposition—

Liam McArthur: You will press on?

Bill Wilson: It is do or die, John.

John Scott: If members will let me finish, I will confirm that I will not press amendment 294. However, I look forward to any amendments that Peter Peacock might lodge in this regard at stage 3. I abide by the view that it is important to preserve the right of the family in an assignation. The family should definitely take precedence rather than share the equality of provision that the minister suggested. That is why crofting was set up in the first place and is worthy of preservation.

For the avoidance of doubt, I sought only that landlords be invited to express an opinion rather than that further powers be vested in landlords. I of all people am not in favour of returning to feudal times, as will be evident from foregoing committee discussions that are already on the record.

I will not press amendment 294.

Amendment 294, by agreement, withdrawn.

The Convener: If no member objects, I will invite the minister to move amendments 205 to 207, 39 and 208 to 209 en bloc.

Karen Gillon: Amendments 205 to 207 would be fine, convener.

Amendments 205 to 207 moved—[Roseanna Cunningham].

The Convener: The question is, that amendments 205 to 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendments 205 to 207 agreed to.

Amendment 39 moved—[Roseanna Cunningham]—and agreed to.

Amendment 208 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 208 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 208 agreed to.

Amendment 209 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 209 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)

Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 209 agreed to.

Amendment 40 moved—[Roseanna Cunningham]—and agreed to.

Amendments 210 to 212 moved—[Roseanna Cunningham].

The Convener: The question is, that amendments 210 to 212 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendments 210 to 212 agreed to.

The Convener: The next group consists of minor and technical amendments. Amendment 273, in the name of the minister, is grouped with amendment 280.

Roseanna Cunningham: Amendment 273 is a minor consequential amendment that will replace the phrase “one month” with “28 days” in section 23(6) of the 1993 act as the period that a landlord has to apply to the Scottish Land Court for a variation of the terms and conditions of letting a vacant croft. That accords with the timescale in new section 26J(5) that the bill will insert into the 1995 act.

Amendment 280 will remove the definition of “local authority” from the interpretation section in the bill, as the phrase is not used in the text of the bill.

I move amendment 273.

Amendment 273 agreed to.

11:45

The Convener: The next group is on the meaning of the term “vacant croft”. Amendment 274, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: There is a temptation to say that “vacant croft” means a croft that is empty, but nothing is ever so simple. Amendment 274 is largely consequential on the new statutory definition of owner-occupier crofter that the bill will provide. The amendment will amend section 23(10) of the 1993 act, which determines when a croft is to be taken as vacant under sections 24 and 25 of that act—which relate to decrofting— notwithstanding that it happens to be occupied. That is, it addresses the situation of unauthorised occupants. Currently, section 23(10) of the 1993 act provides that a croft is to be treated as vacant if it is occupied by a person other than the tenant of the croft. Amendment 274 will expand that provision so that a croft is to be taken as vacant even if it is occupied, unless it is occupied by a tenant or owner-occupier crofter, or a subtenant or tenant of the same.

I move amendment 274.

Amendment 274 agreed to.

The Convener: I ask the minister to move en bloc amendments 213 to 215, 88 and 41 to 43.

Karen Gillon: I object, but it would be fine to take amendments 213 to 215 and 88.

The Convener: Okay.

Amendments 213 to 215 and 88 moved—[Roseanna Cunningham].

The Convener: The question is, that amendments 213 to 215 and 88 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendments 213 to 215 and 88 agreed to.

Amendments 41 to 43 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on amendment of the 1993 act in relation to owner-occupied crofts. Amendment 275, in the name of the minister, is grouped with amendments 276 and 277.

Roseanna Cunningham: Amendment 275 will ensure that owner-occupier crofters are included in section 38(10) of the 1993 act, which lists the persons who are to be included in the commission's consultation process for a new reorganisation scheme.

Amendment 276 will amend section 38A of the 1993 act to include owner-occupier crofters whose croft is situated in the township as persons who may appeal to the Land Court against the commission's decision to reorganise a township or the details of the reorganisation scheme.

Amendment 277 provides that the Scottish ministers may make schemes to provide grants to owner-occupier crofters and their tenants under a short lease for the purpose of supporting any reasonable use that promotes the sustainable development of crofts. It also provides that the Scottish ministers may provide assistance by way of grants to owner-occupier crofters towards the cost of the erection, improvement or rebuilding of dwelling houses and other buildings, or of the provision or improvement of roads or of water, electricity or gas supplies.

I hope that the committee will agree that the amendments, where necessary, align crofting regulation fairly and reasonably for those who are involved.

I move amendment 275.

Amendment 275 agreed to.

Amendment 276 moved—[Roseanna Cunningham]—and agreed to.

Amendment 216 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 216 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 216 agreed to.

Amendments 253 and 254 not moved.

Amendment 277 moved—[Roseanna Cunningham]—and agreed to.

Karen Gillon: Rob Gibson is not here to move or not move amendments. Can you clarify what the procedure is in such a circumstance, convener?

The Convener: Anyone can move an amendment, if they wish to.

Karen Gillon: If nobody moves one of his amendments, what happens? Does it just fall?

The Convener: If nobody moves it, it is not moved.

Bill Wilson: It is not Rob Gibson's intention for amendment 278 to be moved.

Amendment 278 not moved.

Amendment 217 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 217 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 217 agreed to.

Amendment 44 moved—[Roseanna Cunningham]—and agreed to.

Amendment 218 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 218 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 218 agreed to.

Amendment 45 to 47 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group concerns the jurisdiction of the Land Court. Amendment 219, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Amendment 219 amends section 53 of the 1993 act, giving the Land Court powers to determine questions of fact or law arising under that act. It provides that the court has no power under section 53 to determine any matter that could or should have been raised in a challenge to the first registration of a croft under section 12 of the bill. It also allows the Land Court to order the keeper to rectify the register, if appropriate, as the result of a determination that was made by the court under section 53.

I move amendment 219.

The Convener: The question is, that amendment 219 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 219 agreed to.

Amendment 220 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 220 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 220 agreed to.

Amendments 76 and 287 not moved.

Amendment 221 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 221 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 221 agreed to.

Amendment 48 moved—[Roseanna Cunningham]—and agreed to.

Amendments 222 to 224 moved—[Roseanna Cunningham].

The Convener: The question is, that amendments 222 to 224 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendments 222 to 224 agreed to.

Amendment 279 moved—[Roseanna Cunningham]—and agreed to.

Amendment 49 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 49 agreed to.

Amendment 225 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 225 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 225 agreed to.

Amendment 50 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The final group is on the Scottish Land Court's power to award expenses. Amendment 288, in the name of Karen Gillon, is the only amendment in the group.

Karen Gillon: Amendment 288 would ensure that if a decision of the crofting commission were to be overturned by the Scottish Land Court, expenses could not be awarded against the commission. Concern was expressed to the committee that if the commission had to come to a decision on an issue that was finely balanced, it might err on the side of caution if it was afraid that the court might overturn the decision and award expenses against it.

If a sheriff makes a decision in court and an appeal court overturns that decision, the sheriff is not liable to pay expenses. The principle should hold in this context. If the crofting commission makes what it thinks is the right decision and the Scottish Land Court decides differently, that is fair

enough, but expenses should not be awarded against the commission.

The proposal in amendment 288 could provide a useful step in ensuring that issues do not get to the Scottish Land Court or that the court and the commission come to the same conclusions.

I move amendment 288.

12:00

Elaine Murray: Members might recall that the very first stage 2 amendment, which was in my name and was supported by John Farquhar Munro, sought to delete the provision removing Crown immunity from the crofting commission. At that point, the minister argued that the current Crofters Commission itself did not have such immunity and I withdrew the amendment.

However, I lodged that amendment because of concern that the removal of Crown immunity would put the crofting commission in a position different from that, say, of a sheriff, in that expenses could be claimed from it. I think that if the Crofters Commission does not even have Crown immunity at the moment we must agree to amendment 288 as an important backstop. After all, the potential for the new commission to be sued could certainly influence the way in which it works.

Liam McArthur: Elaine Murray mentioned our earlier debate about Crown immunity, during which a number of these concerns were first aired. One concern throughout the process has been to ensure that the commission has the powers, the capacity and the capability to address neglect, absenteeism and other such issues, and one potential constraint is the fear of expenses being charged against it by the Land Court. Although none of us wants the commission to take a cavalier approach, we should still seek to remove anything that might inhibit the commission's ability to take decisions about absenteeism and neglect, and I think that amendment 288 works in that general direction.

Roseanna Cunningham: A lot of comments can be made about this amendment. First of all, putting the crofting commission in this position would make it absolutely anomalous; after all, even Scottish ministers can be sued. Members might be trying to deal with a point about Crown immunity, but I do not think that they understand that what amendment 288 proposes is something quite different. For a start, it would prevent the Land Court from awarding expenses against the crofting commission in any appeal, irrespective of the commission's role in it and of the legislation to which the appeal relates. Inserting such a restriction would fetter the Land Court's discretion with regard to expenses in a way that no other court's discretion is fettered.

Even if in any case the Land Court determined the commission's decision to be unreasonable, the appellant would not be entitled to have their expenses reimbursed, as the amendment makes no provision for any other party to meet the successful party's costs. That is contrary to any other court process and would simply be unfair. Like any court, the Land Court is perfectly entitled to deliver in very narrowly balanced cases what we would call a "no expenses due to or by" decision to reflect such a narrow balance. However, that is not what amendment 288 would do. It would apply not just in cases that are narrowly balanced, but in every single case in which the commission was involved. It would be extraordinary to put a single regulatory body into the position of never having to be held directly accountable for any serious situation in which it has done something wrong.

In fact, amendment 288 is likely to be the biggest deterrent for anyone wishing to appeal commission decisions, as they will know fine well that no expenses will be reimbursed even if they are the successful party in the appeal. I do not see how that is in any way natural justice. The commission should be treated no differently from any other decision maker subject to appeal and the amendment would encourage an unfair judicial system in relation to expenses.

As for the analogy with a court sheriff, who is not subject to expenses as a result of a decision, I point out that the commission is a regulator that regulates, not a court that makes judicial decisions. In a sense, we have already had this discussion and I strongly urge the committee not to support amendment 288 as the proposal would simply be a travesty of justice.

Karen Gillon: The minister is slightly overegging the pudding—although I understand her reservations. I will not press amendment 288 at this stage, but there is a principle of the commission being fettered in making finely balanced decisions in the best interests—it believes—of crofting by the way in which expenses may be awarded against it. We will wish to reflect on the matter ahead of stage 3. I intend to speak to the bill team about it, to see whether there is anything that we can do.

Amendment 288, by agreement, withdrawn.

Amendment 77 not moved.

Schedule 2, as amended, agreed to.

Section 36—Interpretation

Amendment 255 moved—[Peter Peacock].

The Convener: The question is, that amendment 255 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 255 disagreed to.

Amendment 256 moved—[Peter Peacock].

The Convener: The question is, that amendment 256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 256 disagreed to.

Amendment 280 moved—[Roseanna Cunningham]—and agreed to.

Amendment 257 moved—[Peter Peacock].

The Convener: The question is, that amendment 257 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 257 disagreed to.

Amendments 281 and 282 moved—[Roseanna Cunningham]—and agreed to.

The Convener: If amendment 258 is agreed to, I cannot call amendment 226, because of a pre-emption.

Amendment 258 moved—[Peter Peacock].

The Convener: The question is, that amendment 258 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote against the amendment.

Amendment 258 disagreed to.

Amendment 226 moved—[Roseanna Cunningham].

The Convener: The question is, that amendment 226 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Campbell, Aileen (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

Abstentions

Gillon, Karen (Clydesdale) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 4, Against 0, Abstentions 4.

Amendment 226 agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

Long Title

The Convener: Does Peter Peacock wish to move amendment 259, which was debated with amendment 227?

Peter Peacock: Given that every related amendment has been defeated on your casting vote, convener, it would be purely mischievous to move amendment 259.

Amendment 259 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Crofting Reform (Scotland) Bill.

Roseanna Cunningham: See you all at stage 3.

The Convener: That completes the committee's direct involvement in the bill, although I am sure that all members will be involved in stage 3 proceedings, which will take place on 1 July. I thank the minister and her officials for their attendance. That concludes the public part of today's meeting, and I thank everyone in the public gallery for their attendance.

12:10

Meeting continued in private until 12:47.

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