

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 2 November 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

27th Meeting 2005, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

*Richard Lochhead (North East Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jamie McGrigor (Highlands and Islands) (Con)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

Mike Pringle (Edinburgh South) (LD)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

THE FOLLOWING GAVE EVIDENCE:

Rhona Brankin (Deputy Minister for Environment and Rural Development)

♦John Medley (Government of Ireland Office of the Revenue Commissioners)

♦John Curran (Musgrave Group plc)

♦Seàn O'Súilleabháin (Government of Ireland Department of the Environment, Heritage and Local Government)

Shane Rankin (Crofters Commission)

♦by video link

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Christine Lambourne

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 2 November 2005

[THE CONVENER *opened the meeting at 10:04*]

Environmental Levy on Plastic Bags (Scotland) Bill: Stage 1

The Convener (Sarah Boyack): Good morning. I welcome members, witnesses who join us by video link from Ireland, and members of the public and press. I remind everyone to make sure that mobile phones, BlackBerries, pagers or any other electronic kit are switched off. We have no apologies.

The first item on our agenda is consideration of the Environmental Levy on Plastic Bags (Scotland) Bill. This is the fourth of our planned five sessions on the bill, which was introduced as a member's bill by Mike Pringle. This is the committee's first videoconference evidence-taking session. We welcome the witnesses in Ireland and thank them for taking the time to be with us.

I explain to everyone that the committee's role is to consider the provisions in the bill, report back to the Parliament and recommend whether the general principles of the bill should be agreed to—in this case, whether we should legislate to impose a levy on certain types of plastic bags.

As no MSPs have interests to declare, I introduce the panel members in Ireland. I welcome John Medley, assistant principal officer with the collector general's division of the Office of the Revenue Commissioners, which is part of the Government of Ireland; John Curran, group environmental executive of the Musgrave Group plc in Cork; and Seán O'Suilleabháin from the waste prevention and recovery section of the Department of the Environment, Heritage and Local Government, also part of the Government of Ireland.

We will not have opening statements from the witnesses, but I thank them in advance for their written submissions, which are a helpful addition to our other evidence.

Nora Radcliffe (Gordon) (LD): One of the questions that has been raised with us is why we are considering legislating on plastic bags if we seek to take action on waste, given that other litter contributes more to the waste stream. Why were plastic bags chosen as a focus for the effort in

Ireland, as opposed to more substantial waste streams?

Seán O'Suilleabháin (Government of Ireland Department of the Environment, Heritage and Local Government): Plastic bag litter was regarded as problematic here. It was very visible and we estimated that it accounted for 5 per cent of our total litter. That is why the levy was introduced in Ireland. As a result, according to the most recent annual report, litter arising from plastic bags amounts to 0.22 per cent of the total. The initiative was part of the programme for government that was set out when two parties came together to form a coalition Government. Subsequently, the proposals were made through the legislative process.

Nora Radcliffe: One of the other points that has been put to us is that all we are going to do is persuade people to use paper instead of plastic bags. Did you consider placing a levy on both?

Seán O'Suilleabháin: There was no concern about paper bags. A viable alternative was made available to the public in the form of what is called a bag for life. It is a heavier-duty bag. Such bags, which cost the public at least 70 cents, are exempted from the levy and are what members of the public generally use as an alternative to plastic bags. According to surveys, reusable bags are used by 90 per cent of shoppers. Only 4 per cent use disposable plastic bags. Some people use alternatives, such as cartons or boxes.

Maureen Macmillan (Highlands and Islands) (Lab): Good morning, gentlemen. I will carry on from where Nora Radcliffe left off and ask you about the non-food retail sector. Evidence that we have received suggests that the non-food sector—clothes shops, fashion shops and so on—has gone heavily into upmarket paper bags, rather than plastic bags, which has implications for the waste stream. Is that so?

Seán O'Suilleabháin: The purpose of the levy was to control a specific problem. We have no evidence that the paper bags that are used in the non-grocery sector are causing a problem.

Maureen Macmillan: Have you looked at how packaging in the food retail sector has developed? We received evidence that vegetables and fruit that used to be sold loose are now being heavily packaged, because people cannot access a free plastic carrier bag at the checkout. We have been given figures showing, for example, that four apples that used to be packaged in 1.8g of plastic are now being packaged in 8.11g of plastic. That information came from one of the packaging firms that gave evidence to us last week. Do you have any comments on those figures?

Seán O'Suilleabháin: Pre-packaged and loose fruit and vegetables have always been available,

and continue to be available. Plastic bags up to maximum dimensions are exempt from the levy if they are used to carry unpackaged fruit, vegetables or confectionery. There is also an exemption for bags that are used to hold unpackaged cooked meat, and uncooked meat, regardless of whether it is pre-packaged. All supermarkets make plastic bags available at the counter where loose fruit and vegetables are sold. Bags up to the dimensions specified in the regulations are exempt from the levy.

The Convener: Perhaps John Curran could give us the retailers' perspective.

John Curran (Musgrave Group plc): We have not measured whether there has been an increase in packaging as a result of the levy. Packaged fruit and vegetables have been a factor in retailing for some time. There is a shift towards more presentation packaging for such items, but we are not convinced that that is a direct result of the levy.

Maureen Macmillan: Did you consider exempting degradable plastic bags from the levy?

Seàn O'Súilleabháin: No, because regardless of whether a bag is degradable or not—and regardless of whether it is dropped deliberately or by accident—it still causes a litter problem. The purpose was to control a specific litter problem.

Maureen Macmillan: Retailers here, such as the Co-op, use degradable plastic. Do any retailers in Ireland use degradable plastic?

10:15

John Curran: Musgrave started using biodegradable bags, but we had storage difficulties with them because they had often begun to degrade by the time they were distributed. As Seàn O'Súilleabháin said, the overall aim of the legislation was to reduce littering and that is why we supported it. In that context, whether the bag is biodegradable or non-biodegradable was of no consequence.

Rob Gibson (Highlands and Islands) (SNP): Can the panel inform us whether any confusion arose in the public's mind about the liability to pay the levy?

Seàn O'Súilleabháin: Under the regulations, the retailer is specifically obliged both to collect the levy for any bags that it issues and to charge members of the public the 15 cent levy for each bag. Giving bags away free is not an option as the retailer is prohibited from absorbing the cost and remitting that to the Office of the Revenue Commissioners. The purpose behind that requirement was that it was believed that if retailers in a competitive retail sector absorbed the cost and continued to issue bags for free, public behaviour would not change in the way that it has

because of the obligatory imposition of the levy at the point of sale.

Rob Gibson: If the levy applies to all bags, does that mean that it applies also to the second-hand bags that might be issued by, for example, charity shops? Was any thought given to exempting categories of shop?

Seàn O'Súilleabháin: No, there is no exemption for any category of shop. There is an exemption for heavier-duty bags that are designed for reuse, provided that the member of the public is charged at least 70 cents for the bag. People usually find that the bags that they have bought in the previous two or three years are still usable. The second exemption is for foodstuffs, such as confectionery, fruit and vegetables and meat.

John Medley (Government of Ireland Office of the Revenue Commissioners): To amplify on that, I should mention that we have some other exemptions, such as for bags that are used in the provision of a service. For instance, when someone collects dry-cleaning or a pair of shoes that have been left in for repair, any bags that are provided are not subject to the levy because they are provided in connection with the supply of a service rather than with the supply of goods.

Mr Alasdair Morrison (Western Isles) (Lab): I have two short questions. First, what has been the levy's impact on the plastics industry? Have there been any job losses as a consequence of the levy? Secondly, has the levy resulted in a net gain for the environment or just in a straightforward displacement, for example to the production of plastic for use in other forms, such as in additional packaging?

Seàn O'Súilleabháin: We are not aware of any job losses. I have come across one publication—I cannot recall the source—about the closure of one company, but the author of that report was not able to state that the closure was on account of the introduction of the levy. On the other hand, there is anecdotal evidence that the use of bin liners has increased. One company in the state was quoted in one of the national newspapers as saying that its output had increased substantially. There is no evidence for job losses. It was estimated that only 25 per cent of plastic bags were manufactured in the state before the introduction of the levy. If the market has changed because of the levy so that people are not reusing plastic bags as bin liners, it is up to industry to adjust. I know from anecdotal evidence that at least one company reacted to that change and benefited from it.

What was your other question?

Mr Morrison: Has there been a net gain for the environment? I am thinking of plastic bags

entering landfill or clogging up ditches and drains and being a nuisance in the country.

Seàn O'Súilleabháin: We reckon that the effect of the levy has been neutral with regard to landfill but positive with regard to litter. Before the introduction of the levy, plastic bags accounted for 5 per cent of litter. According to the national litter pollution monitoring system, that percentage had fallen to 0.32 per cent by December 2002, 0.25 per cent in 2003, and 0.22 per cent in August 2004. There has been a benefit to the environment.

Mr Morrison: Some of the panel members explained to us how the exemption for loose fruit and vegetables works. Is it the case that if someone takes a banana, two oranges and three apples in a basket to a till, they do not pay a levy on the bag that they collect at the till?

Seàn O'Súilleabháin: There is no levy as long as the product is not pre-packaged. People can even put the apples and bananas into separate bags. As long as the bag comes under the dimensions specified in the regulations—225mm in width, 345mm in depth, and 450mm in length, inclusive of any handles—is used solely to contain confectionery, non-packaged fruit and vegetables and meats and is available at the food counter and not at the till, it is exempt from the levy.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I am still trying to get a handle on the net environmental gain that Alasdair Morrison spoke about. As I understand it, the primary motivation for the legislation was to get rid of unsightly plastic bags hanging from trees and so on. The major thrust of the legislation was not aimed at coping with increased waste. Is that an accurate summary of the aim of the legislation?

Seàn O'Súilleabháin: That is correct; that is it in a nutshell.

Mr Brocklebank: Are you then missing the target for overall environmental gain? It has been estimated that the gain that you are making through plastic bags not going to landfill is only 0.3 per cent, whereas replacing plastic with paper could lead to as much as 17,000 tonnes of extra landfill. That does not sound like a net environmental gain to me.

Seàn O'Súilleabháin: We do not have hard data on the additional paper waste arising as a result of the levy. However, the quantity of waste that we send to landfill is being reduced. We have other measures in place, besides the plastic bag levy, to discourage sending waste to landfill. We have a second measure whereby there is a €15 per tonne levy on waste going to landfill. That levy also goes into the environment fund. Those measures have been introduced over the past few years.

Additionally, it now costs the waste management sector in Ireland approximately €150 per tonne to send waste to landfill. Those market forces are encouraging the diversion of waste to composting—even waste that has been collected in the municipal stream, where it will be segregated in the material recovery facility. It is now cheaper for many waste operators to take the compostables out of what has been collected from bins. Also, recycling rates are rising. The plastic bag levy on its own was not going to solve any problems to do with waste minimisation. We have other measures to do that.

On the question of other positive benefits for the environment, the plastic bag levy in 2004 raised more than €13 million and that money has been invested in a number of initiatives and additional recycling facilities that are operated by local authorities. The funds also go towards enforcement initiatives either by the Environmental Protection Agencies or by local authorities. Funds have also been distributed for research and development in the waste area and for raising environmental awareness. Those funds are ring fenced—the Exchequer does not get hold of any of them, nor does it have any say in how they are disbursed.

Mr Brocklebank: Do you have any statistics on the extra tonnage that is being transported around the roads because people are switching significantly from plastic to paper? Paper is much heavier than plastic. Have you looked at whatever overall net environmental effects there might be from the increased tonnage of paper that is being transported around the roads? I am thinking of the extra fuel costs, the problems of repairing roads, and that kind of thing.

John Curran: As a large retail business in Ireland—we have about 25 per cent of the retail food sector in Ireland—we do not offer a paper alternative. Your assumption is that plastic will automatically be replaced with paper, but that has not happened, as far as we are concerned. We provide long-life, reusable bags and, in some stores, cardboard boxes, which are ultimately recycled anyway. There is now a large drive for recycling in Ireland. I would not imagine that fuel usage or transport usage for transporting large amounts of paper bags is a big problem. We simply do not offer the alternative.

10:30

Richard Lochhead (North East Scotland) (SNP): One of the arguments that has been put to the committee is that the bill will help to educate people about waste and their impact on the environment and that it will push those issues further up the agenda. What were the ripple effects of the introduction of the levy in Ireland? Is

there any evidence that consumer and retailer behaviour has changed in other ways as a result of the legislation, which gives a higher profile to people's behaviour and the impact of waste? Has the legislation had wider benefits?

Seán O'Suilleabháin: The legislation brought home to the consumer the polluter pays principle. In that sense, it raised awareness among members of the public of the environmental cost. In addition, more than €10.6 million to date has been paid out of the environment funds towards awareness raising and initiatives on litter and general waste awareness.

A leaflet campaign prior to the introduction of the levy explained its purpose. The levy per se did not necessarily raise awareness, but members of the public have realised that there is a polluter pays principle. More than €10.6 million has gone towards successful waste awareness campaigns and anti-litter initiatives, and that also raises awareness.

Richard Lochhead: If we put the levy to one side, is there any evidence of a change in consumer or retailer behaviour as a result of increased waste awareness? Retailers have implemented the legislation, but are there examples of them going further than that because they have realised that cutting down on waste is a bigger issue than they had previously thought it to be?

John Curran: I will give you the Musgrave view of life. We are aware of much greater consciousness among the public nowadays of waste management, the need to recycle and the need to cut down on the amount of waste that we generate. We operate in both the UK and in Ireland, and we see different behavioural practices in recycling levels in stores and among consumers. In Ireland, much of the behaviour is driven by the fact that we have much stricter legislation on waste, much greater enforcement and much higher waste costs. The fact that it costs a lot more money to throw things in the bin in Ireland is a simple educator. When people have to pay more, they look to alternative means to avoid cost. The situation has improved not only with the plastic bag levy, but with a series of environmental regulations.

Richard Lochhead: Your last comment was very interesting. Is that improvement coincidental? How many of the other changes in behaviour relate to the introduction of the levy?

John Curran: A common theme runs through much of the legislation. People recognise that the throwaway society that we have become is no longer sustainable. Therefore, much of the legislation is about making people realise that there is a cost to throwing things away: there is an

environmental impact and a financial impact. The same applies to businesses. Our retailers operate a franchise business. We have done a lot to educate our retailers that what they throw in the bin will cost money and what they recycle will save money. That is why our current recycling levels are at well over 60 per cent.

The Convener: What is your general view of the impact that the levy has had on your business? We are aware that at the start of the levy process many retailers were nervous. Have they been won over or do concerns still exist in the retail industry? Is there a division between the supermarket sector and clothes retailers?

John Curran: We are a food retailer, so I can comment only on food retailing. I anticipated that somebody would ask whether there had been an impact on sales and the answer is that there was no negative impact. There is a level playing field, because all our competitors are covered by the legislation too.

Elaine Smith (Coatbridge and Chryston) (Lab): I gather from what you have been saying that the plastic bag levy is about litter. Although the other initiatives on waste that you mentioned are interesting, we are considering whether to introduce a levy on plastic bags.

I have two questions, the first of which arises from what you said this morning. Given that the levy was introduced to tackle a litter problem, did you consider other ways of doing that? Did you consider using the set-up and administration costs—I believe that the initial set-up fee was €1.2 million in 2002 and the annual running cost fee for 2005 was €349,000—to employ litter wardens, which would cover more litter than just plastic bags? Did you consider other taxes, such as a tax on the packaging from fast-food outlets, which I presume also causes a litter problem?

Seán O'Suilleabháin: The department is in negotiations with a number of sectors with a view to developing negotiated agreements, with some form of economic instrument. There might not necessarily be a tax, but those sectors would contribute to the prevention of litter and to any remedial work that would have to be done where litter arises. We are considering a number of areas, such as chewing gum and fast-food packaging; they are still under negotiation.

Elaine Smith: If the plastic bag tax is working well in tackling the litter problem, why would there not be a tax on chewing gum or the other kinds of waste that you mentioned? Why are you thinking along the lines of agreements, rather than a tax?

Seán O'Suilleabháin: The policy in Ireland is that we work with social partners. We have a social partnership arrangement whereby, when we introduce new initiatives, we try to engage all the

relevant stakeholders. The area is under discussion. With economic instruments, we have a broad range of options. If an adequate instrument can be introduced, the preference is for that to happen with the agreement of all parties concerned.

Elaine Smith: Did you consider spending the money on other ways of tackling litter—for example, on employing litter wardens—rather than on administering the levy?

Seàn O'Súilleabháin: Unfortunately, the use of litter wardens comes at the wrong end of the spectrum, in that it happens after littering has occurred. The purpose of the levy was to prevent litter: basically, it was designed to change behaviour. A litter warden generally has an enforcement role rather than a preventive role.

Elaine Smith: Revenue from the levy seems to have been more than was expected. Is that because people are buying more bags than you thought that they would? Are they paying the tax rather than changing their behaviour?

John Medley: There is a substantial rate of compliance with the levy, from the revenue point of view. Approximately 80 per cent of the bags come from the supermarket sector, mainly from the major chains, and from the major clothing stores, although they have generally moved to a paper product. Sorry—I have lost my thread. Could you please repeat your question?

Elaine Smith: I wonder whether the higher-than-expected revenue is a result of people continuing to buy bags instead of finding different ways of carrying their shopping, such as in boxes. Why are you getting more revenue from the tax than you thought that you would?

John Medley: We have put in place a knowledge and compliance programme—that is set out in my written submission—which means that we are more effective in chasing people who are not sending in returns to us. The compliance campaign includes another programme, which has started to move in recent years. The regulations required each retailer to do a stocktake on the evening before the introduction of the levy and to keep separate records of purchases and dispersals of the bags. It is possible that, when the revenue commissioners carry out an audit, they will compare the consumption of the bags with the remittances through the system and will come up with any underpayments, giving a small allowance for wastage and so on. This year in particular, there have been several substantial back-duty settlements covering plastic bags. Those figures are not yet in the public domain, but I presume that they will be available next year. That is part of the reason why revenue from the levy has increased.

I am not sure why else the revenue is so high. There may be a little slippage as well. We have not analysed the figure but it is climbing, which suggests that there is increased consumption. However, if the audit settlements were taken out of that, the growth would not be as big as it looks on paper.

Elaine Smith: The levy is a flat-rate tax that applies to everyone. Does the tax hit lower-income groups harder? For example, people who have higher incomes might have cars into which they can put cardboard boxes, whereas people who have lower incomes may not be able to do that. Also, did you consider gender proofing the legislation before you introduced it? For example, does it hit women harder?

Seàn O'Súilleabháin: I do not think that any gender-proofing exercise was done. The levy applies to anyone who goes into any retail outlet and uses a disposable plastic bag. Often, supermarket shopping is a joint operation. What was your other question?

Elaine Smith: People in lower-income groups may not have the privilege of owning a car. In Scotland, women tend to be in the lower-income groups, so they may be the ones who have to pay for plastic bags in which to carry their shopping. That is why I asked about gender proofing—I wonder whether the tax hits women harder than it does men—and whether the tax hits lower-income groups harder, because they may not have the facilities to use other means. In addition, perhaps it is easier for better-off people to buy bags for life.

10:45

Seàn O'Súilleabháin: A bag for life generally costs only about €1.30 or €1.50, and they have a long lifespan, so they are not an issue for people on low incomes. In addition, when the levy was being developed it was considered that it would have an equivalent impact on men and women, and on urban and rural communities.

Mike Pringle (Edinburgh South) (LD): I have a few questions for John Curran. First, what was the attitude of the retail trade before the introduction of the levy, and in what way and how quickly has it changed? Secondly, we have heard that there has been a considerable increase in theft in supermarkets as a result of the levy. Could you comment on that? Thirdly, how simple is the scheme to operate for retailers?

John Curran: I am not at the forefront of retailing, in the sense that we operate a franchise system and have many retailers—we operate 600 stores in Ireland—but the general feedback was that the levy was just another tax. Some saw the positives in the levy, but many saw it as possibly a negative, because there was an administrative

element to it. However, given the initial reaction, people have gradually accepted the levy and the reason for it, and they have just got on with it.

Other than anecdotal evidence, we have not noticed any large change in theft levels. We have heard of people loading up trolleys and walking straight out the front door of shops, but we cannot confirm that.

I am not altogether familiar with the operation of the system from a revenue reporting point of view, but I have not heard anything to indicate that it is particularly difficult, or more difficult than any other tax.

Mike Pringle: I have a question for Seán O'Súilleabháin. You state in your submission that 90 per cent of the levy comes from the top 10 customers, but go on to say:

"The result was a marked decrease in the customer base, which at the start of 2005, had reduced to some 14,744 cases."

Perhaps your colleague John Medley could also comment. Before the levy was introduced, how many people did you expect would apply to pay it? Presumably, given what you state in your submission, a large number of people decided to opt out.

John Medley: As we mention in the paper, we used economic codes—NACE codes, which I understand are the standard European codes—to ascertain the number of retailers in the country. At the time, the Irish Revenue's maintenance system for the code was not very good. We had a lot of spurious registrations and there were people who should not have been in the system at all. At one stage, I said that an undertaker would ring us up and ask, "Why are you sending me this?" and sure enough one did. We sent out to everybody, no matter who they were, an insert in VAT returns stating that the levy was on the way and that we would be in contact with those whom we felt had an obligation. Using the NACE code scan, we were able to contact the people who we felt probably would have an obligation, bearing in mind that the code was not 100 per cent accurate.

We had quite a good response; people said "I don't deal with this kind of product", "I use paper", or "I don't even trade in the type of commodity that you think I trade in." That brought the figure down. We found a big shift away from plastic once the levy was introduced, particularly among the small shopkeepers. The system of reminders to people who were not sending in returns brought back a lot of comments, such as, "We've given up using plastic packing and we've moved over to paper packaging."

We then ran a telephone campaign. We have quite a small staff, but we picked a number of smaller counties in Ireland and tried to contact

everybody who was not sending us remittances to find out why. Again, they came back with the same reasons.

Finally, another reminder was sent out. It had a form on the bottom saying, "If you don't deal in plastic wrapping, please let us know the date you ceased to do so." By whittling away in that way, we have brought down the customer estimate, which was a bit spurious, to a more realistic figure. We have also used estimates in the compliance system. The estimates are sent for enforcement, mainly to the revenue sheriffs. That has flushed out people who were ignoring the levy. At the end of the day, we were able to confirm that people used the packaging. That is how we brought the figure down.

The Convener: One of my colleagues asked about the substitution of paper for plastic. You said that there had been quite a distinct shift away from plastic generally, particularly among the smaller retailers. Do you have any analysis of what types of paper bags people are using, or of whether there is a mix of paper bags and bags for life?

John Medley: Anecdotal evidence—and my own experience of shopping, on my own and with my wife—is that there has been a huge increase in the number of people using bags for life. Those bags are not made of plastic; many of them are made from a cloth medium. After 10 fills, a bag for life has paid for itself. In the beginning—I am not sure whether the scheme has continued—some of the supermarkets would give people a free bag if a so-called bag for life wore out. In that way, once people are out of the plastic packaging mentality, and they are getting a free bag when their bag for life wears out—if it ever does—they stay away from plastic packaging. On principle I have never paid the levy, but I might get caught out from time to time when I go to the corner convenience store after hours. Plastic bags may still be used in that area.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): We heard that a retailer who failed to charge a levy on their bags was prosecuted; I understand that it was South Dublin County Council pursuing Virgin Megastores, and that the fine was €150. Is that the only prosecution that has taken place to date? If so, why?

Seán O'Súilleabháin: That is correct—that is the only prosecution case. There was an earlier case, but the company concerned went into administration so the matter did not go before a hearing. There is a high level of compliance. When complaints are received regarding non-compliance, the retailer is usually visited by an enforcement officer. Our aim is not to go in hard and to instigate prosecution, but to bring the retailer round by encouraging compliance. The fact that the revenue commissioners are involved

in collecting the levies ensures that there is a high level of compliance. When we get complaints regarding non-application of the levy, it is generally a trading issue, particularly in the multiples. There are local control systems to ensure that levies are collected in each location, but we get complaints about the odd slippage, which can be put down to trading issues. When problems are brought to the attention of the management of the retailer concerned, they put matters right.

In two instances, prosecutions have been instigated due to repeated non-compliance. The publicity about one of those prosecutions helped to make other retailers compliant even though they had received a number of warnings and were getting close to having proceedings taken against them.

Mr Ruskell: So the high level of compliance is achieved through inspectors working with retailers about whom complaints have been made.

Seán O'Suilleabháin: That is it. When a complaint is received by the Department of the Environment, Heritage and Local Government, the revenue commissioners are informed. Likewise, when local authorities receive complaints they pass the information to the revenue commissioners. The publicity that was generated by the case that I mentioned has helped. Several retailers had received a number of warnings and proceedings were about to be taken against them by the relevant local authorities, but when the first conviction was made those retailers decided to co-operate and comply with the legislation. The fact that the revenue commissioners are involved also helps because retailers do not want to draw attention to themselves.

Mr Ruskell: I understand that, in Ireland, it is local authorities' responsibility to administer the levy. Local authorities in Scotland are concerned that administration of the scheme will cost a lot of money and tie up a lot of time. Have local authorities in Ireland worked together across boundaries to reduce the burden? Are there examples of best practice?

Seán O'Suilleabháin: We bring together enforcement officers from time to time to share their experiences and report on the work that they have done in the preceding period. The levy is a positive benefit to the local authorities, in that the bulk of the funds for enforcement are distributed to them. Various officers are engaging with retailers and some funds have gone to local authorities to cover training on awareness issues. Local authorities do not necessarily get the full costs for a specific operation, because the funding has to cover enforcement in relation not just to plastic bags but to packaging and other waste streams.

Nevertheless, the levy generates funding for enforcement.

Local authorities do not administer the collection mechanism in Ireland—the revenue commissioners do that and the department pays them for that service. The costs of setting up the collection system came from the funds, as did the costs for raising awareness in the publicity campaign. We pay approximately €350,000 to the revenue commissioners each year for the services that they provide to the department in collecting the levy.

11:00

The Convener: Are local authorities reimbursed entirely by central Government from levy funds for the cost of the enforcement work that they do?

Seán O'Suilleabháin: No. Levy funds would not necessarily be released for specific types of enforcement work. Basically, how local government raises funds for services is a matter for local government. Services are funded through the rates and the local government fund. On top of that, local authorities get funds for awareness raising or for other areas of spending, such as infrastructure, on either a scheme basis or a case-by-case basis.

The Convener: So local authorities do not get support for the enforcement officers. They have to fund that service as part of general local authority work, but they benefit from extra money for waste campaigns, which they would not have had previously. Is that right?

Seán O'Suilleabháin: The funds that come into the department through the landfill levy and the plastic bag levy are not intended for specific purposes. However, the department has made funding available to local authorities that would not have been available to them otherwise.

The Convener: I have another question about the amount of money that the levy raises. If you have managed to reduce the number of plastic bags by 90 per cent and people are not using as many plastic bags, why has the levy not stayed the same as it was when you first started collecting it but has gone up marginally over the past few years? I cannot square the two facts.

John Medley: I would find it difficult to comment on that. I can put it down only to proactive working by the revenue staff, who are outdoors, and success in auditing. Perhaps seeing people being prosecuted—pour encouragez les autres—has made people more compliant. I do not have any details on why the money is growing, but I imagine that it is a combination of those factors.

The Convener: It is partly about a more efficient collection of the levy over time, with more people

being brought into its operation. You are reducing the number of bags, but you are ensuring that everybody who has used the extra bags is paying the levy. Is that interpretation correct?

John Medley: Yes. We are removing spurious registrations from the customer base and concentrating on the people who are left. Therefore, our resource can be applied more efficiently to go after people who are non-compliant for reasons such as the non-submission of returns.

The Convener: I do not want to extend this session forever, which we have the capacity to do, but two colleagues indicated earlier that they wanted to ask supplementary questions. They may ask a brief question each.

Maureen Macmillan: You said that people would probably pay for their plastic bags in, for example, small corner shops that open late in the evening. People have expressed concern about the safety of the staff in such shops—which often sell alcohol—because customers might start acting aggressively if they are asked to pay for bags. Do you have any anecdotal or other evidence of such incidents? Are such incidents a genuine concern, or did they happen initially until the levy was accepted?

John Curran: We have no evidence of such incidents.

The Convener: That was brief and to the point.

Mr Brocklebank: Am I correct in saying that there is little or no indigenous plastic film industry in Ireland?

Seàn O'Súilleabháin: There are some plastic bag manufacturers in Ireland. Before the levy was introduced, Irish producers supplied 25 per cent of disposable plastic bags.

Mr Brocklebank: I gather that the bulk of the plastic that is used in Ireland for bags is imported from the UK, the far east and Europe. Perhaps some special pleading was involved but, after examining the import statistics for the product in question, our own plastic bag manufacturers claim that there has been no reduction in the amount of plastic that is imported into Ireland. Moreover, they claim that there are inconsistencies in the Irish import and UK export statistics that “favour the Irish position”, and indicate that there has been

“an attempt to cover up the fact that the Irish legislation has not worked”.—[*Official Report, Environment and Rural Development Committee*, 26 October 2005; c 2280.]

Will you comment on those claims?

Seàn O'Súilleabháin: As we said, the legislation's sole purpose was to solve a litter problem, which is what happened. We did not claim that it would have any other waste

minimisation or prevention effects; that it would prevent the use of additional plastic; or that it would reduce the amount of plastic that goes to landfill. We simply had a very visible litter problem; when it became clear that retailers had a viable alternative in bags for life, we introduced the levy and the problem disappeared immediately.

Nora Radcliffe: We heard evidence that the levy might be challenged under European competition law. Was that issue ever raised in Ireland?

John Medley: That issue was raised when the levy was introduced because of a legal claim on the continent—in Denmark, as far as I remember—with regard to aluminium drink cans. However, in Ireland, the consumer can still choose to use plastic bags. After all, we have not banned plastic bags; we have simply discouraged their use. The consumer can either pay the levy and use plastic bags or move to a more environmentally friendly form of packaging that carries no such obligation.

The Convener: I thank the witnesses for answering our questions, some of which were quite pointed and difficult. We wanted to get a sense of how the levy is operating in Ireland and it has been useful to hear your different perspectives on the subject. I also thank you for your written evidence. I hope that you found the session interesting. The evidence will be available in the *Official Report* for others to read.

I thank Martin Laing and his Scottish Parliament colleagues for their work with Seàn O'Súilleabháin in setting up the video link and for helping to facilitate the evidence taking. I was concerned that I would not be able to hear everything, but that was not the case.

I suspend the meeting for a couple of minutes so that the technical stuff can be cleared up. Although the minister is due at half past 11, we shall continue with agenda items 3 and 4.

11:09

Meeting suspended.

11:13

On resuming—

Subordinate Legislation

Plant Breeders' Rights (Discontinuation of Prior Use Exemption) (Scotland) Order 2005 (SSI 2005/460)

TSE (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/469)

Reporting of Prices of Milk Products (Scotland) Regulations 2005 (SSI 2005/484)

The Convener: Under agenda item 3, we have three instruments to consider under the negative procedure. Colleagues have copies of all the relevant papers. Members of the Subordinate Legislation Committee have considered the instruments and have commented on SSI 2005/469. We have circulated an extract from that committee's report, as well as an extract from the *Official Report*, to give members a flavour of those discussions and the views that the committee wanted to bring to our attention.

Do members have comments on the instruments?

Members: No.

The Convener: Are members content with the instruments and happy to make no recommendations to the Parliament?

Members *indicated agreement.*

Item in Private

11:14

The Convener: Under agenda item 4, we are invited to consider the evidence that we have heard on the Environmental Levy on Plastic Bags (Scotland) Bill in private at our next meeting, which will be attended by the Minister for Environment and Rural Development and Mike Pringle. Therefore, we should consider having a slot at the beginning of the meeting. Are members happy with that suggestion?

Members *indicated agreement.*

The Convener: We intend to deal with the draft report in private at each committee meeting until we have a final report.

11:16

Meeting suspended.

11:29

On resuming—

Draft Crofting Reform Bill

The Convener: For agenda item 2 on crofting I welcome the Deputy Minister for Environment and Rural Development and her officials. The bill is the final piece of legislation that is envisaged in the Scottish Executive's land reform programme. It is the last piece of the jigsaw that is about to be put into place. This morning's session will enable us to consider the minister's proposals before they are introduced to Parliament.

We will scrutinise the proposed crofting reform bill when it is introduced to Parliament early next year. The Executive recently consulted on its draft bill, so much discussion about it is going on outside. The session will give the committee the opportunity to ask the Executive about issues that have arisen from the consultation in advance of formal scrutiny of the bill.

A couple of MSP colleagues from other committees are with us. I welcome John Farquhar Munro and Jamie Stone.

I ask the minister to introduce her officials and to make some opening remarks. We will then move to questions.

11:30

The Deputy Minister for Environment and Rural Development (Rhona Brankin): Thank you, convener. Beside me are Shane Rankin, the head of crofting policy at the Scottish Executive; Mark Richards, from the office of the solicitor to the Scottish Executive; and Sheila Scobie, the bill manager. I will keep my remarks brief so that we can maximise the time for questions.

I thank the committee for giving me the opportunity to speak today about the draft crofting reform bill. It is an important bill for the crofting communities and for people in Scotland. Crofting is a unique and valuable part of Scotland's culture. The Scottish Executive is committed to sustaining crofting and the communities of the crofting areas.

Crofting has sustained population and communities in some of Scotland's most remote rural areas for decades. In general, it is not just the relatively small income from crofting agriculture that has sustained people in those communities; access to a piece of land, the opportunities that that land presents, housing support and the security that crofting law and crofters' rights provide have sustained them.

The draft crofting reform bill builds on our vision for land reform, which aspires to more sustainable

crofting communities; more local involvement in crofting administration; more active crofters; and more activity on croft land than just agriculture. Much of that agenda was delivered through the Land Reform (Scotland) Act 2003, when crofting communities were given the right to take control of their land, but there are aspects of the land reform agenda that can be delivered only through the proposed bill.

Some commentators have dismissed the provisions in the bill as concerning technical issues that are of little relevance to anyone other than bureaucrats. I firmly believe that that is misguided. Crofting law is a complex subject, and crofters' rights and obligations very much interconnect and interact. If we get the detail wrong, we will facilitate rather than prevent the abuses of crofting that already concern many MSPs.

I firmly believe that the draft crofting reform bill is important for the people of Scotland. The Parliament must be able to legislate for all the people of Scotland, including the several thousand crofters who are spread across the most remote parts of the country. Crofting is not just a form of small-scale agriculture in far-flung Scotland; it can and must contribute to many aspects of life in those communities, and it must contribute to meeting the expectations of a wider society. It must contribute a critical mass of population that will sustain services; it must sustain a critical mass of agricultural activity to support key agricultural infrastructure; it must help to maintain land management that would otherwise be uneconomic; it must sustain an agriculture that supports many valuable and varied environments; it must prevent some landscapes from reverting to wilderness; it must support distinctive language, music and culture; and it must put people who live locally at an advantage over holiday-home and second-time buyers. It must, with its community dimension, sustain community cohesion where that might otherwise collapse.

Crofting can contribute much but, in many respects, it is in danger of being strangled by its own bureaucracy and by the rights and protections that exist. Crofters want simple and speedy regulation, as do the rest of the Scottish people, and that desire is at the heart of the draft bill.

The responses to the consultation on the draft bill have been interesting and varied. There has been support for many aspects of the bill and there has been opposition to others. The fact that only 150 or so responses were received might suggest that there is a degree of contentment with the provisions in the bill. I will publish our analysis of the consultation responses in the near future.

Since the consultation on the bill closed, there has been considerable media attention on crofting

and, in my view, much of it has been ill-informed. I am delighted to be able to reassure the committee that many of the concerns expressed by the media or by MSPs are already being addressed by provisions in the bill or will be addressed by amendments.

In considering the options for changes to the bill before it is introduced, I have been assisted by a panel of crofting experts who have debated the options with me. Before I make my final decisions, I intend to visit several crofting areas and to speak directly to some key individuals and organisations. I expect to conclude on the changes to the bill during the next few weeks.

The Convener: Thank you very much, minister.

We now turn to colleagues' questions. I have had four indications of interest already; it looks like the whole committee wants to get in. Alasdair Morrison will go first.

Mr Morrison: I have a number of points to raise with the minister but, before I do that, I should declare a relevant interest: I am a member of the Scottish Crofting Foundation.

I will begin with the perception and the reality of one of the major fault lines in the draft legislation that relates to a free market in tenancies. How can the minister convince me and the people I represent that the draft bill will not realise the singularly depressing situation of a free market in croft tenancies? When crofts start to change hands—as they do at the moment—how will the legislation ensure that the value placed on a croft takes into account permanent improvements, whether drainage, silage pits, barns or whatever? How do we prevent crofts from changing hands for £66,000 when they should be changing hands for £6,000?

Rhona Brankin: There are different ways of addressing such issues. How to ensure that croft land is used appropriately is one thing that the bill addresses, and we continue to consider that. Concerns have been raised, for example about a well-publicised case in Taynuilt, where croft land passed into ownership for housing for large amounts of money. I am also aware that there are concerns in Skye about the sale of croft land and high prices on assignations.

We have not yet made any final decisions, but we are considering how we can ensure that croft land is managed appropriately, whether it is crofted by a tenant or owned by an owner-occupier. I have raised the issue with the reference group. I am aware that there are concerns about inappropriate use of croft land through neglect and allowing buildings to fall into disrepair. We are considering the possibility of changing the bill so that croft owner-occupiers and croft tenants are treated in the same way. I am

conscious that, in the past, there has been a discrepancy between the way in which croft tenants and owner-occupiers are regulated.

At the moment, croft tenants are obliged to live on and work their crofts. I believe that there may be merit in placing the same clear obligation on owner-occupiers. The challenge for us is to ensure that ownership does not become a way in which people can avoid regulation and thereby potentially neglect the croft, treat it as a second home or sell it on as a holiday home to the highest bidder. Therefore, we are considering the possibility of changing the bill to enable the Crofters Commission to ensure that people who have bought their croft still come within the compass of regulation.

In addition to expanding crofting regulation to ensure that it covers owner-occupiers, another key way in which we can deal with this business of the sale of crofts is to affect the supply of crofts. One of the most exciting aspects of the bill is its ability to create new crofts. That has huge potential. I know that consideration is being given to creating hundreds of new crofts in Shetland and we also have opportunities through the Forestry Commission's on-going work—I know that Rob Gibson has asked questions about this before—on possible forest crofts. Crofts could also be created in Balmacara, where the National Trust for Scotland has already created new crofts. New crofts have also been created in Jura.

By providing the potential to create large numbers of new crofts, the bill could not only begin to make a significant difference to the way in which croft land is used but give an opportunity to the approximately 700 persons who are on the Crofters Commission's list of people who want to get into crofting.

Mr Morrison: Going back to my initial question, I want to know how the bill will prevent a free market in tenancies. If I understand the change that the minister is proposing, all croft tenants would be redefined as occupiers. However, if I may use the croft on which I live as an illustration, I am perfectly satisfied with my landowner, which is Stornoway Trust. How will redefining croft tenants as occupiers help to ensure that we do not witness the continued abuse of tenancies?

Rhona Brankin: The proposed change would not change the status of croft tenants. I reassure Alasdair Morrison and his constituents who are involved in the Stornoway Trust that that is fundamentally not what we aim to do.

We want to ensure that people who own crofts come within crofting regulation and are not able to abuse that ownership. The change to the draft bill will ensure that such crofts are looked after properly and are not neglected. One way in which

it might have an impact on the market is that people will need to think carefully before buying their croft because, as an owner of a croft, they will have to meet the same requirements and responsibilities as croft tenants.

Mr Morrison: If I appreciate fully what you are saying, the proposed change to the bill will act as a straightforward disincentive to anyone living within a publicly owned estate such as Stornoway Trust—thankfully, more communities are now moving in that direction—who might be thinking of privatising their croft. Are you saying that the change will dampen prices and act as a straightforward disincentive?

11:45

Rhona Brankin: We want to ensure that, when someone is considering buying, they are clear about what being an owner of a croft involves and that they will be regulated. My view is that owners can get away with neglect at the moment, and we need to tackle that. The proposed change may be a way of ensuring that people who are considering buying a croft are clear that if they buy it, they will have to manage the croft land appropriately.

Mr Morrison: The crux of the issue is the value when the croft is bought.

Shane Rankin (Crofters Commission): The proposed approach would address the issue to which you refer in the sense that someone would not be able to secure a tenancy or to buy a croft if they did not intend to use it as a croft, to live on the land or to cultivate it—in other words, if they did not intend to be a crofter.

In many communities, the market pressure is a result of people wanting to move in and not do very much at all—they might want to retire or to have a holiday home. Much of that demand would be dampened by the approach that we are suggesting.

Rob Gibson: The Land Reform (Scotland) Act 2003 makes provision for communities to buy their crofting estates and there has been much discussion of using an amendment to the draft crofting reform bill to address the problem of interposed leases, which has arisen from communities' concern that they could be deprived of the ability to use the land that they buy. In the past year, we have been told that the Executive will continue to take evidence on the matter and will tell us what it intends to do. In light of the legal opinion that Professor Paisley of the University of Aberdeen has offered, I hope that you can tell us today what you intend to do. Once you have enlightened us on current developments, I would like to ask a supplementary.

Rhona Brankin: I am cognisant of the problem that interposed leases pose to the legislation on the right to buy. My officials have a meeting with Professor Paisley, of whose views I am aware, coming up very soon. I cannot give you a definitive view today, because I need to take advice following that meeting. There are options open to me, but I have not made the final decision about whether we should take legal action or tackle the issue in the bill. However, I am acutely aware of the problem of interposed leases and recognise its potential to stand in the way of our legislation on the right to buy. As soon as I make a decision, I will inform the committee.

Rob Gibson: I ask my question in the context of the regulations that the Crofters Commission can use. It appears that the reforms that are suggested in the draft bill will mean that any changes in the use of crofts will be more transparent, in that the Crofters Commission will notify local people about potential objections and so on and there will be open discussion of them.

The fact that interposed leases could exist and might have been private could well be dealt with by the new bill, but in the meantime can you offer the people who are involved in community buy-outs any guarantee that they will not have to wait 18 months for the problem to be solved?

Rhona Brankin: I can guarantee that we will deal with the matter in an appropriate manner as soon as possible. We need to have a discussion with Professor Paisley. I assure you and the communities concerned that we take the issue seriously and will deal with it as soon as possible.

Rob Gibson: In the past, crofters could buy their crofts at 15 times the annual rental, but I understand that in the draft bill the croft value will be the market value. Why have we moved to that position? If an aged crofter moves into a home and has to assign the tenancy to a relative who wants to take over the croft, an assessment will be made and it appears that they might have to pay the market value. How will people in crofting communities be able to afford to keep on crofts that are in their family?

Rhona Brankin: That ties in with the question that Alasdair Morrison asked earlier. The value accorded to croft assignments varies a lot in different places in Scotland. I am cognisant of the fact that in areas such as Skye there is huge pressure because a lot of people want to buy crofts but they are simply not available. That is coupled with the pressure of people who want housing. As we know, housing demand is critical on Skye. I remember that when I lived in the Highlands many people lived in caravans on Skye.

A series of factors have come together to produce a critical situation for parts of the crofting

community. Market values have soared because of the demand for crofts. The situation is not the same in all parts of Scotland; in other parts of Scotland the market value of crofts is relatively low. As I said to Alasdair Morrison, we need to ensure that when someone considers buying a croft they are clear about the regulation and responsibilities that will accrue from ownership of it. We must also ensure that there are opportunities for local young people to come into crofting. The supply of crofts is important. The rules of succession are currently complex and bureaucratic. It is necessary to consider simplifying the rules and to investigate how we can enable crofts to be released. Some people are in crofts that are not being worked in the way that we want them to be worked. If we could reduce the amount of bureaucracy, we could facilitate the release of existing crofts.

Maureen Macmillan: You have talked about how the sale of crofts can be dampened down, but there also seems to be an open market in tenancies. I have seen croft tenancies on the Black Isle advertised at £50,000, £60,000 and £80,000. The perception is that there is perhaps not enough regulation or that the regulations are not being pursued as assiduously as they might be. Is there is room for improvement in the regulation of tenanted crofts to make sure that people do not buy crofting tenancies with a view to having a nice house—with what they regard as a big garden rather than a croft—within easy commuting distance of Inverness?

Also, have you have had discussions with the Minister for Communities about how best to deal with planning issues in crofting communities? In the Taynuilt case, it seems that the Crofters Commission is powerless because the local authority has designated the land for housing. Is there a case for the Crofters Commission having a role early in the planning process?

Rhona Brankin: I agree that, whether someone is a tenant or an owner, there has to be an adequate framework that ensures that the land is used properly. Shane Rankin might want to say a little more about that before I move on to the Taynuilt case.

Shane Rankin: The provision in the draft bill that addresses Maureen Macmillan's point would give the Crofters Commission the power, in place of the landlord, to challenge neglect. A lot of people are concerned that croft land is not being used and that people are taking on crofts without intending actively to use them. The power exists to allow landlords to challenge the neglect of croft land, but landlords do not do that. The draft bill proposes that the Crofters Commission, in conjunction with the community, should be able to challenge neglect if the landlord gives consent—in

most cases, they would. That will ensure that the land is used and that the tenancy commitments are met.

Rhona Brankin: As I said, I am aware of the Taynuilt case and the issues that arise from it. I agree with Maureen Macmillan; one of the critical issues is the interface between the crofting regulations and planning legislation. In the Taynuilt case, planning legislation superseded the interests of the crofting community. That was subsequently borne out by the decision of the Scottish Land Court, although there are questions about the size of that crofting community.

Recently, I had a meeting with Malcolm Chisholm, because we are conscious of the fact that a major piece of planning legislation is about to be published and we wanted to think about how we can ensure that the needs of crofting communities are considered at an early stage in the planning process. It looks as if we might be able to include something in the crofting reform bill to ensure that the Crofters Commission engages with crofting communities to consider planning issues. One of the most contentious issues, of course, is the pressure on housing. The crofting community is concerned about good agricultural land being used for housing, which removes that land from other productive uses.

It is critical that the crofting community is engaged at an early stage. I envisage a clear role for the Crofters Commission in ensuring that there is discussion with the crofting community. If there is pressure and sons and daughters of crofters have no access to housing, I want the crofting community to work with the Crofters Commission and think about what is best for the community. Alasdair Morrison has experience of such work on Lewis and the Crofters Commission has been involved with communities in Knock and Swordale and in Lochalsh. The key point is to make sure that there are no surprises and that the needs and aspirations of crofting communities are fed into the planning system early.

12:00

Mr Ruskell: You said that the bill is relevant to all the people of Scotland and that there are exciting opportunities to create new crofts on Forestry Commission land, for example. Given that much of the commission's estate lies outside the crofting counties, what is in the bill for people in Perthshire? That county has a big forestry resource on which there is a great deal of economic focus; it also has housing needs and its people desire to work the land. What is in the bill for them?

Rhona Brankin: There is nothing in the bill to extend crofting to other parts of Scotland,

although, in our consultations, we have heard strong views about a possible extension to Arran. It may be possible to consider opportunities for people who want to become landholders or tenants—not necessarily in crofting, but in other forms of land use and tenancy. I know that Jim Hunter is interested in that idea. However, at the moment there are no proposals to extend the crofting jurisdiction to any other part of Scotland except, perhaps, Arran.

Mr Ruskell: Are crofting and crofting tenure inappropriate for places such as Perthshire or have we not properly considered the best form of land tenure in those areas?

Rhona Brankin: More work has to be done on that. We must also look at the implications of extending crofting tenure to Arran. That was outwith what we were looking at, which was the reform of crofting legislation to ensure that crofting continues and becomes an even more sustainable form of land use that supports communities and culture in the crofting counties.

Shane Rankin: The question whether there is a need to look at the implications of using crofting as a device for rural development captures the point neatly. Although crofting has been successful at sustaining population in the crofting areas for decades, it is a burdensome approach to land use and tenure and it may not be the best way of tackling the issues that concern Mr Ruskell in north Perthshire. However, there is merit in exploring further whether crofting could be a device in facilitating what he is looking for.

Mr Ruskell: Do you intend to work on that soon?

Rhona Brankin: Considering forest crofts and opening up new crofting opportunities in the crofting counties will be interesting and we may be able to learn lessons from that.

Mr Brocklebank: One of the draft bill's problems appears to be a lack of clarity about the Executive's philosophy on the crofting system. Is crofting land held in custodianship or is it the property of an individual to do with as he or she decides? It seems that the Minister for Environment and Rural Development believes it to be the latter. He says that the Executive has no right to interfere in the free market of crofting land and that crofters should be allowed to cash in on their assets. Is that what the bill is about?

Rhona Brankin: Absolutely and fundamentally not. Crofters have had the right to buy since 1961 and many have taken that up, although many prefer not to. A crofter could use the right to buy to gain working capital. However, many choose not to do that.

The first point that you made is key—custodianship is hugely important. Perhaps as we continue the dialogue on the subject, we should be more explicit about custodianship. I mentioned that in response to Alasdair Morrison's point and I have been having discussions about it with the expert panel that advises me, so I am actively considering the matter.

I have described the consideration that we are giving the matter to ensure that regulation is about croft land being used in an appropriate way, whether the land is owned or rented by a tenant. We can begin to address some of the issues that have dogged parts of the crofting counties, such as assignations or crofts changing hands for large amounts of money, with the worry that they will be used as second or holiday homes and not make the contribution to the crofting community that they could.

Mr Brocklebank: I do not want to nit-pick, but it seems paradoxical that, although you claim to want to cut through some of the red tape and regulation, the one amendment that you propose is to create yet further regulation to ensure that an owner-occupier is regulated in the same way as a tenant. If we are talking about having more regulation, should you not go the whole hog and say that the Crofters Commission requires its powers to be reinforced in the way that you described in relation to the Taynuilt situation?

Rhona Brankin: We need much greater clarity in the regulation as it affects owners and we also need to be absolutely sure that the Crofters Commission has the power to enforce that regulation. I do not know whether you are suggesting that we should abandon the right to buy—perhaps that is Conservative party policy. Abandoning the crofter's right to buy, which has been in place since 1961, is not practicable, as the vast majority of people recognise. We need to ensure that there is proper custodianship of croft land and that there are opportunities in the crofting community for youngsters to take up, so that the land is appropriately used.

Mr Brocklebank: We certainly do not suggest abandoning the right to buy—you will not be surprised to hear that—but we are concerned about the apparent right to speculate, which seems to be current in parts of the Highlands.

Rhona Brankin: As I said, we need to ensure that croft land is used appropriately and that speculation, the exchange of large amounts of money and the use of crofts and croft land for second homes are kept to a minimum. I am interested to hear you say that you do not want to do away with the right to buy. That right has existed since 1961, as I said, and the right to assign has existed since 1976. We need to ensure

that however croft land is held—whether by a tenant or an owner—it is used appropriately.

Elaine Smith: Some of the discussion so far has helped to illustrate the old saying about a croft being a parcel of land surrounded by legislation. I know that you have said that you are excited about the possible creation of new crofts and you mentioned the importance of housing support—I presume that that would be part of your vision for a vibrant future for crofting. However, to realise that vision, we need to discuss housing on the croft rather than the other kind of housing that we have been talking about. The former grant scheme for providing houses—the crofters building grants and loans scheme—historically provided 250 to 300 houses annually in remote areas that had a shortage of housing. It was a successful scheme in that regard. I note that it has been changed to the croft house grants scheme. Is that grant scheme for tenant crofters, for owner-occupiers or for both? What is the grant at the moment? Is it upgraded—for example, is it index linked? Can you tell us a little bit about the grant? Also, is there a loan element, or has that been done away with?

Rhona Brankin: I ask Shane Rankin to give you the detail.

Shane Rankin: The housing grant scheme was revised recently and the grant was substantially increased. In fact, the grant effectively doubled for some of the areas where it has been targeted, where it has risen from £11,000 to about £22,000. The largest grants are made available in the most remote locations. An exercise was undertaken to determine the eligible areas.

The scheme is on a par with Communities Scotland's rural home ownership grant scheme, but it is more generous in a number of respects. It is very much targeted at the crofting community and the croft tenants. Criticism has been made of the level of the grant relative to its value 10 or 15 years ago; nevertheless, it remains a substantial grant towards the construction of a house on a croft that is available solely for crofters. It is still a valuable aid to someone who has secured a croft tenancy.

The loan element was taken out of the scheme when the revisions were made on the basis that, although it was considered valuable by some people, it was relatively modest in its contribution. Although at one time the loan rate was 7 per cent, it was certainly not a soft loan rate any more. The advantages of the loan approach over someone taking out a commercial loan had disappeared, so that element of the scheme was not considered to be so desirable.

Elaine Smith: I am curious about the figure of £22,000, as my research shows that it would take about £50,000 to build a modest croft house with

three bedrooms and one toilet. Could a tenant who is no longer part of a loans scheme get a commercial loan, even though they might not have any collateral for such a loan? How would they make up the difference between a grant of £22,000 and a cost of £50,000? Are there any extra grants to cover on-costs such as access roads, water supply, electricity installation, architects' fees, planning fees and building control fees? Is £22,000 the maximum that the crofters can access?

Shane Rankin: Essentially it is, although that figure can cover some of those other elements. It is important to remember where the scheme came from. It was created decades ago to make it feasible for crofters to build a house on their croft when they did not have absolute security over the piece of land on which they were going to build that house and when there were not the same opportunities for receiving support from other agencies.

Elaine Smith: What are those opportunities?

Shane Rankin: The other opportunity that exists is Communities Scotland's rural home ownership grant scheme, which some crofters take up because it provides certain advantages to them. The biggest change has been that to permit any crofter to remove their statutory house site from the croft so that it becomes, effectively, a feu; it becomes not subject to crofting regulation and, therefore, capable of being used as part of the equation with the bank to secure the loan. I think that that change was made about 30 years ago. It allowed crofters to approach the funding of their house in a different way and meant that there was not the same need for the Government and the public sector to provide the full financial assistance to build a house.

12:15

Elaine Smith: I remain quite concerned about some of this, convener. I wonder whether there are any plans to review the scheme, looking at the houses that used to be built and what the numbers are now. The fact that help was taken away—the grant was reduced for surveyors and clerks of works, who were often quite useful in guiding crofters through the process—has perhaps meant a reduction in crofters' confidence to try to build houses. I wonder whether there will be a review of the scheme, as £22,000 seems a low figure for the building of a croft.

The Convener: May I make a suggestion? We have a briefing paper on crofting from the Scottish Parliament information centre, which names the grants that are available but does not go into depth about what they are. Perhaps we could

commission more background research for members to look at after today's session.

Rhona Brankin: If it would be helpful, we could produce some further information.

The Convener: If you have that information readily available, rather than bandying figures around the table, it would be useful for members to be able to see what is available and what the interaction is between the different grant regimes.

Three colleagues have indicated that they wish to ask a question and another has not even indicated yet. I am trying to keep us moving. This is not our scrutiny of the bill; it is our pre-legislative scrutiny. Let us keep cracking on.

Richard Lochhead: The minister may be aware that back in the 1880s there was a close vote in the House of Commons when the MP for Aberdeenshire moved that Aberdeenshire be included as a crofting county. If fewer than 20 of the hundreds of MPs who voted had voted differently, Aberdeenshire would be one of the crofting counties.

I am interested in exploring the theme of extending the crofting tenure outwith the existing crofting areas, which was pursued earlier by one of my colleagues. You said that you had investigated that to a degree. You also mentioned Arran. I think that you said that you consulted on Arran—perhaps that was just the way in which you phrased your words. Can you say a bit more about what you have done so far to ascertain whether there is demand for, or a case in favour of, extending crofting beyond the existing crofting counties? To what extent have you consulted specifically on Arran?

Rhona Brankin: There was a public meeting on Arran at which there was considerable support for the extension of crofting to Arran. By far the largest single group of responses to the consultation came from people on Arran.

Shane Rankin: About a third of the responses to the consultation came from Arran. There was a huge reaction when the public meeting was announced. About 300 people came to 13 public meetings, and a third of those came to the meeting on Arran. There was very strong interest on Arran. Richard Lochhead mentioned Aberdeenshire, but there is a strong sense on Arran that the community there lost out at some stage because it was left out of the list of crofting areas. The challenge in exploring the proposal is in the legal implications of progressing with it and how those might be pursued. That is being considered by the office of the solicitor to the Executive to see whether it can practicably be done.

Richard Lochhead: I was interested in the minister's statement that you would in the future like to consider in more detail which areas—if any—it would be appropriate to include. My concern is that we now have the opportunity to do that. The legislation will be before us shortly, so there is an ideal opportunity to include other areas, if that is the route that we decide to go down. There is a case for carrying out a feasibility study to find out whether there is demand in, or a case for, areas other than Arran.

Rhona Brankin: We need to ensure that where crofting exists, it works to the benefit of the crofting communities. I know that there is concern among the crofting communities that extending crofting to other parts of Scotland could, in some way, dilute the support that those communities receive. The bill is probably not the place to consider extension of crofting to other parts of Scotland. The case for Arran appears to be a particular case that is based on the treatment that it received when the crofting legislation was originally enacted.

I acknowledge—people such as Jim Hunter are keen on this—that we need to look at opportunities for creating different new forms of landholding that can begin to support regeneration and the development of exciting and sustainable forms of land use in different parts of Scotland. At the moment, my view is that the bill is not the vehicle for consideration of that in the wider context, but that is not to say that my mind is closed to consideration of such issues in the future.

Richard Lochhead: I am sure that the people of Arran believe that they will get a sympathetic hearing from the First Minister on the issue, and I hope that other areas can also get a sympathetic hearing if their case is made.

There is a reference to small landholders in the Government's paper, so you will be aware that there are still a number of small landholdings in Scotland that were created under the Small Landholders (Scotland) Act 1911. They missed out on the benefits that were given to crofters, and on those that accrued under the Agricultural Holdings (Scotland) Act 2003. There are small landholders in places such as Banffshire, Aberdeenshire and elsewhere in Scotland who could be said to have been left in the lurch. To what extent have you given thought to addressing that situation?

Rhona Brankin: In essence, I will not move on from the answer that I have given already. The strong view that has come through the consultation is from people in Arran. I am also aware that there is an issue in respect of small landholders. We need to be able to consider that issue in a broader context than the bill. I will be content to do that.

Shane Rankin: The other consideration is that smallholders in the areas outside Arran to which Richard Lochhead referred raised the issue partly because they felt that their concerns were not addressed during consideration of the Agricultural Holdings (Scotland) Bill. However, there is a considerable debate among lawyers about whether that is the case. The issue is being explored to see whether it should be dealt with.

The Convener: Will we get some form of briefing on that when the bill comes back to the committee?

Rhona Brankin: You can be sure that you will get some information on that.

The Convener: That would be helpful.

Two non-committee members have sat patiently through everyone else's questions. Jamie Stone indicated first that he wanted to ask a question. Would you like to follow up on any of the questions or add more?

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I thank the convener and the committee members for allowing me to ask questions.

I have a follow-up to Alasdair Morrison's question. We in the Highlands are frightened of raw market forces prevailing in the sale of crofts. Minister, further to your answer to Mr Morrison, are you considering giving the Crofters Commission the absolute power to impose a new tenant when an owner-occupier is deemed not to be running a croft properly?

Secondly, are you considering giving the Crofters Commission a duty to inspect tenanted and owner-occupied crofts regularly?

Rhona Brankin: We seek to give the Crofters Commission powers to impose a tenant or to remove a tenant and impose a new one. We are clear that we must be able to tackle situations in which land is not being adequately used.

Mr Stone: For the avoidance of doubt, if an owner-occupier is not running a croft satisfactorily, the Crofters Commission would have the power to impose a new tenant on that owner-occupier.

Shane Rankin: The proposition is essentially to treat an owner-occupier in the same way as a tenant. If the owner did not comply with the statutory conditions in respect of living on or near the croft and working it, they would have a tenant imposed on them and would be treated as a landlord. As the minister said, the idea is not yet fully developed, but such an approach might address some of the concerns.

Rhona Brankin: That is why I am hesitating. The idea is relatively new and has developed out of discussions. We need to discuss it more and

work through the implications with solicitors. The intention is to ensure that owners are treated in the same way as tenants in relation to how a croft is being used. I am sorry that I cannot give you more detail, but members will appreciate that the idea has emerged relatively recently. It is potentially exciting, but we have not worked through with solicitors the detail of how it would work in practice; work continues.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Thank you for permitting me to speak at the meeting. I used to sit on the former Rural Development Committee, and rural development is still dear to my heart.

Like Mr Morrison, I declare an interest. I, too, am a member of the Scottish Crofting Foundation—at least I am as long as I paid my dues last year.

At the outset, you mentioned the response to the consultation, which I found interesting. I was always of the opinion that the consultation that was undertaken when the proposals were in their early stages was limited. What consultation is currently being undertaken with the crofting communities up and down the country? As far as I am aware, many communities and crofters were not aware that a bill was being proposed until very recently, when they became aware of comments in the press and on the radio. What is the current situation?

Rhona Brankin: I will outline the consultation that has taken place. A series of public meetings were held in May and June to explain the purpose and content of the draft bill and to inform the consultation process. There were 13 such meetings, which were held throughout the crofting areas. You already know that a meeting took place on Arran. About 330 people attended the public meetings, of whom 100 attended the Arran meeting. We received 84 returned forms and 71 written responses. That is part of a process that has been going on since January 1999, when "Land Reform Policy Group Recommendations for Action" was published. Consultations and discussions have been going on since then.

When I came back into the environment and rural development portfolio, I became conscious that there were still real concerns about the bill within the crofting community and that some people felt that they would like more consultation. I have taken those concerns seriously. I have met the cross-party group on crofting at Mr Munro's invitation, and the Scottish Crofting Foundation. I have visited Tiree and will visit Shetland, the Western Isles and Assynt to discuss with crofters a range of issues, including the bill. I am listening; it is useful to hear comments that are made in the committee.

I have been working with the reference group of people who have an active interest and huge experience in crofting, whether as active crofters or as lawyers with experience of crofting legislation, and I have found it hugely helpful. My ears are open and I am still considering a range of issues—my mind is not yet made up. People will have opportunities to lodge amendments during the bill's passage.

12:30

It is also important to say that, if you contrast what has happened since the advent of the Scottish Parliament with what happened before, you will see a huge difference. There would be maybe one or two pieces of Scottish legislation going through Westminster every year. In the first session of the Scottish Parliament, there were more than 60 pieces of legislation. This latest bill is the final piece in the jigsaw of land reform legislation: it is an important bill for crofting and for crofting communities. The Scottish Parliament gives us opportunities for legislation in the future and things are moving on quickly. For example, the crofting community right to buy is radical legislation that is changing land ownership in radical ways. There could be issues in the future about the interface between crofting regulation and other issues in respect of where communities have bought croft land, so I do not see the bill as being absolutely the last word on the matter.

The bill is important and will ensure that people in crofting communities have increased opportunities. It will ensure that land in crofting communities is used appropriately and it will create a strong and central role for the Crofters Commission in ensuring that regulation takes place. It will also embed the commission into the planning process meaningfully. It is a hugely important bill, but that does not mean that there cannot be other crofting legislation in the future. It is a matter that the committee, Parliament and the Executive will have to watch closely.

John Farquhar Munro: I am encouraged by that. As you have pointed out, we did not have the opportunity in the past to debate, discuss and promote Scottish issues to the extent that is possible now. The bill is important for the crofting communities, so it is important that we get it right because legislation that has previously been passed is now creating problems for this bill.

Last night, several of us had a meeting with the ministerial team, and I was encouraged by the responses that we received. We are still of the opinion that crofting is agriculturally based and should remain that way—with some minor exceptions, of course—and that the Crofters Commission should be given the power to

regulate, more thoroughly than in the past, both tenants and landlords.

The Convener: Alasdair Morrison has a small supplementary question.

Mr Morrison: My question relates to planning. In your discussions with Malcolm Chisholm, are you moving towards the position that primacy will be given to crofting considerations in planning issues? Can you reaffirm that the newly defined Crofters Commission will indeed be interventionist and will actually do what it should have been doing in past years? With its new powers, will the commission be under a duty to use them?

Rhona Brankin: Our views on planning are not finalised. There was a possibility that we would consider the Crofters Commission as a statutory consultee, but that would probably be overly cumbersome. Our views on the role of the Crofters Commission are not finalised, but it is essential that the Crofters Commission and communities be involved in planning, because the planning system is based on elected representatives. At the moment, because the planning system is based on planning legislation, the Scottish Land Court finds that crofting regulation is regarded as being less important than planning legislation. The key is for the Crofters Commission and crofting communities to be engaged and to have a role when plans are being drawn up.

What was your second question?

Mr Morrison: Will the Crofters Commission have a duty to use its new powers?

Rhona Brankin: Absolutely. We need to ensure that the Crofters Commission has the power to intervene to make a difference. It is hugely important for the Crofters Commission to make a difference and to ensure that crofting be regulated in a way that crofting communities like, which has not always been the case. We need much greater clarity around regulation and the role of the Crofters Commission in ensuring that regulation is carried out.

The Convener: I have had a request for a brief intervention from Rob Gibson. It must be fewer questions than Alasdair Morrison sneaked in.

Rob Gibson: There is just the one. I very much value Alasdair Morrison's point that agreements have been reached for housing developments in Lewis on common grazing land, not inby land. However, such agreements have not been reached in other parts of the Highlands and Islands. Will the bill ensure that if a local plan shows a need for housing, areas of common grazing in particular communities can be included where housing could be developed?

Rhona Brankin: The key point is that we need a bill that will allow local responses to local needs

because, as I said, the position in Skye is quite different from the position in Shetland, which is different from the position in Lewis, which is different from Tiree and so on. The key is that local crofting communities must work with the Crofters Commission to seek local solutions to local problems. The Crofters Commission has an important role in acting developmentally and being engaged with communities early—it already is in four or five areas—and in extending that role to other parts of the crofting communities.

The Convener: I will wrap up the meeting—if I look at colleagues around the table I will get more requests to speak. I thank everybody for engaging in the debate. I know that it is a lively debate, and that there are many concerns about what the bill will look like, so I hope that the minister's clarification has been useful. It has been useful to me as a city centre MSP to be able to stand back and examine the principles of the debate. I look forward to seeing the bill.

The minister gave a couple of commitments on information about grants and their operation, levels of support and information on a legal update.

I hope that the discussion has been useful in flagging up issues to people round the table and in informing people outwith Parliament about the state of play. I thank the minister and her officials. We look forward to chasing up the issues about the nature of crofting, who can become a crofter, how the Crofters Commission operates, what powers it will have, the relationship with planning, and the relationship with agriculture and housing. We will have to get our teeth stuck into a lot of issues. As a committee, we will probably want to take some of our evidence outwith Edinburgh. There will be lots of issues for us to think about when the bill is introduced.

I thank everyone for a lively and in-depth discussion that will help to progress the bill.

Meeting closed at 12:39.

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