

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 19 April 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

12th Meeting 2006, 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)

*Maureen Macmillan (Highland 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:

Eleanor Scott (Highlands and Islands) (Green)

THE FOLLOWING GAVE EVIDENCE:

Ethel Burt (Scottish Executive Legal and Parliamentary Services)

Ian Cairns (Scottish Agricultural College)

Hughie Donaldson (Scottish Crofting Foundation)

Derek Flyn (Macleod and MacCallum)

Professor Jim Hunter

Shane Rankin (Scottish Executive Environment and Rural Affairs Department)

Andy Robertson (NFU Scotland)

Mike Watson (Scottish Executive Environment and Rural Affairs Department)

Brian Wilson

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 19 April 2006

[THE CONVENER *opened the meeting at 10:09*]

Crofting Reform etc Bill: Stage 1

The Convener (Sarah Boyack): I welcome members of the public, the press and colleagues to the meeting. First, I remind people to switch off their mobile phones and BlackBerries and not to place them anywhere near the broadcasting system.

I alert people to the fact that Richard Lochhead resigned as a member during the recess. We do not have a replacement Scottish National Party member at our meeting today. I welcome Eleanor Scott, who is with us this morning. We expect that John Farquhar Munro will join us at some point.

Agenda item 1 is our first stage 1 evidence session on the Crofting Reform etc Bill. At stage 1, our role as a committee is to consider the bill and to produce a report in which we recommend whether the Parliament should agree to the bill's general principles. To help us to do that, we have a packed programme of evidence taking from witnesses over the next five weeks. In addition, we have invited anyone who has an interest in or views on crofting to give us written evidence, which we can use in our oral sessions. During the consideration process, we will visit Oban, Stornoway and Inverness and we hope to hear from people who are involved in crofting on a daily basis.

I kick off by inviting colleagues to make any relevant declarations of interest.

Mr Alasdair Morrison (Western Isles) (Lab): I am a member of the Scottish Crofting Foundation.

Rob Gibson (Highlands and Islands) (SNP): I, too, am a member of the Crofting Foundation.

The Convener: Does Maureen Macmillan have an interest to declare?

Maureen Macmillan (Highlands and Islands) (Lab): No. I put my pen up because I wanted to get in first with a question.

The Convener: You were queuing to get in. I thank colleagues for their declarations.

I welcome the members of our first panel, which consists of officials from the Scottish Executive. We have asked them to give us an overview of the

bill and how it has developed, and the plans to amend it at stage 2 by introducing the idea of a proper occupier. Mike Watson is the Executive's bill manager for the Crofting Reform etc Bill. Shane Rankin, who is chief executive of the Crofters Commission, is also representing the Executive this morning.

Shane Rankin (Scottish Executive Environment and Rural Affairs Department): I am head of crofting policy at the Scottish Executive and I am here in that role.

The Convener: Aileen Imrie and Ethel Burt are solicitors from the Scottish Executive Legal and Parliamentary Services team.

I invite Shane Rankin to make a short opening statement, after which we will have questions from colleagues.

Shane Rankin: Thank you for the opportunity to give evidence to the committee and to open the session.

The Crofting Reform etc Bill will bring important changes for crofting and crofting communities, for wider rural development and for the Crofters Commission. It will reinforce the inherent strengths of crofting tenure, will create flexibilities that will allow crofting communities to decide how they want crofting to evolve in their townships and will eliminate bureaucracy that holds back communities' and individuals' ambitions.

In January 1999, the land reform policy group published its recommendations for land reform in Scotland, which included proposals to amend crofting legislation. In July 2002, the Executive published a white paper that addressed the five main objectives that the land reform policy group had identified, which were to have more sustainable crofting communities, more local involvement in crofting administration, much simplified crofting legislation and administration and more active crofters, and to allow crofters to undertake a wider range of land-based and other economic activity in addition to agriculture. The bill that has developed progresses those objectives.

The consultation paper on the draft bill was published in March 2005. As well as outlining the policy background on crofting, the process of consultation on crofting reform and the outcome of consultation on the white paper, it presented the draft bill and invited responses in general terms and through a number of specific questions. In total, 155 written responses were received. Since the consultation closed, the Deputy Minister for Environment and Rural Development has visited Shetland, Assynt, Tiree and the Western Isles to discuss with local crofting interests the issues surrounding the draft bill. In addition, she has convened a ministerial reference group of crofting experts to discuss and examine options for dealing with those issues and to identify ways forward.

There have been significant changes to the proposals for legislation since the white paper was first published. Crofter responses to the consultation on the white paper indicated that a proposal to allow local regulation of tenure was unpopular and it was dropped. In response to changing circumstances, the draft bill included new provisions to allow crofters to enter into binding agreements with their landlords to give up their right to buy, to designate energy development as a reasonable purpose for the resumption of croft land, to allow resumption payments to be paid in instalments and to create schemes for development.

10:15

The bill as introduced contains further changes reflecting issues raised during consultation on the draft bill, including: dropping the proposals for allowing owners to enter into short-term lets; introducing a number of new measures including provision for the creation of new crofts outwith the crofting counties; a major amendment to the Land Reform (Scotland) Act 2003 to allow crofting community bodies to acquire leases over croft land; and a simplification of the provisions intended to deal with neglect and misuse. In addition, there are a number of other, less significant, changes.

In order to address the planning and housing pressures affecting croft land, ministers have clarified the scope of the local policy's provision, to make it clear that the mechanism can be used to establish how communities want to see croft land released for development. They have also made a commitment to introduce at stage 2 proposals for a new concept of proper occupier.

Under current crofting legislation, the Crofters Commission has the power to require any croft owner to relet his or her croft. That means that a croft owner is technically the landlord of a vacant croft. That power has been used by the commission, but only rarely, and that has been in recent times when a crofter has sought to thwart action against absenteeism. After the introduction of the crofters' right to buy their crofts, in the 1970s, the commission took the view that treating croft owner-occupiers as landlords would be against the spirit of the new right to buy. However, the right to buy is being used on occasion as a means of avoiding living on or near the croft and of avoiding working it. It has also, in some instances, become a prelude to asset stripping the croft of any house site potential.

The proper occupier proposals will create a framework in which those existing powers over croft owners can be used more rigorously, without removing the right to buy, which is an important and highly valued crofters' right. At the same time,

the proper occupier proposals offer protection to owners who genuinely live near to and work their crofts. It is proposed that an individual who owns a croft at commencement of the act, and who was either the former tenant of that croft or the successor in title to a former tenant, will become a proper occupier of that croft, as will any individual who acquires a croft from a proper occupier. The intention is that the Crofters Commission will not serve notice on a proper occupier to require them to relet their croft. A person who acquires a croft from a person who is not a proper occupier, including a tenant buying from a croft landlord, or who acquires part of a croft, will not be a proper occupier but may apply to the Crofters Commission to become a proper occupier.

The commission may withdraw proper occupier status, either in response to a complaint or on the basis of information that it holds, and it should have discretion over whether it does so. If proper occupier status is withdrawn, the commission may invite the owner to submit proposals for reletting the croft—that is, it would invite the owner to find a tenant for the croft.

The proper occupier proposal is a significant change to crofting legislation and it should discourage neglect, absenteeism and asset stripping. I would be pleased to answer any questions from members.

The Convener: More than half of the committee members are queuing up to speak, so I shall work my way around the table, starting with Maureen Macmillan.

Maureen Macmillan: I want to kick off by asking about the Crofters Commission's vision for crofting. The bill is part of our land reform legislation. With other such legislation, such as the Land Reform (Scotland) Act 2003 and the Abolition of Feudal Tenure etc (Scotland) Act 2000, we all knew what we were focusing on. However, the Crofting Reform etc Bill, by its very nature, makes it difficult for us to focus on what we are trying to achieve for crofting, as much of it comprises a series of amendments to other legislation. As you know, a lot of concern has been raised that the bill does not address problems in the crofting community. Will you say more about what those problems are and why the commission has been reluctant to deal with them? People thought that you already had the powers to deal with problems such as absenteeism, but those problems have not been resolved. What will be different as a result of the bill?

Shane Rankin: One of the significant factors in the current legislation is that it applies in the same way to all crofting communities, regardless of their circumstances. Different crofting communities have different views of what crofting is, how it should function, what it is for and so on. However,

the commission must take its lead from the legislation. There is limited latitude. The commission has a certain amount of discretion, but varying measures such as absentee action can be quite a tortured, resource-intensive process. You say that the commission has not used the powers that it has, but it has tackled absenteeism in a significant way. In the past nine years, it has experimented with engaging communities on how they would like absenteeism to be tackled. It is determined to tackle absenteeism and to persuade communities that it would be good to do that. However, some communities are more resistant to that approach than others. Only two years ago, there was an independent evaluation that suggested that the commission had not only tackled and resolved something like 1,400 cases of absenteeism, but had also through absentee action delivered about 600 new people to crofting communities. That is a significant increase in the population of remote communities.

We are accused of not using the power to control assignments. The perception is that the commission has the power to ensure that the best and most appropriate person secures the assignment of a croft. However, the power is simply a power of veto. It does not allow the commission to ensure that the best candidate secures the croft. It simply ensures that the candidate who is put forward by the outgoing tenant has reasonable intentions and that it is reasonably likely that they will work and live on the croft. The accusation that we have not used the power is invariably misguided or ill informed.

Over the years, the commission has taken a sensitive approach to absentee action. As a result, challenges emerge when an individual is deeply wedded to their croft and does not want to give it up because of their family history or family connection to it, even though they may not have lived there for some time and may have no intention of living there. When the final stages are reached and the commission makes it absolutely clear that it will not back off, people often seek planning consent to ensure that they will not lose any financial advantage. In those circumstances, it becomes difficult to force through absentee action without some development happening on the croft. That was the scenario in Taynuilt last year.

Maureen Macmillan: How will you address that issue in the bill? Will there be a provision to ensure that there is some interaction between planning and crofting?

Shane Rankin: As I suggested in my opening statement, the interaction will be through the local policies mechanism. The proposal in the bill allows a number of things. It will allow the commission to work with communities to establish how they want

crofting to be developed and used, how they want absenteeism to be tackled, how they want land to be released for development, what land they do not want to be released and so on. That is one of the significant propositions in the bill. The other is the proper occupier proposal.

Maureen Macmillan: You said that some communities are not willing to engage with the commission on absenteeism. Will they be willing to engage with it on planning procedures and the other areas that you mentioned? I can imagine that some communities will not want to do that. They might want to build as many houses as they can and get the money.

Shane Rankin: For the crofting community, the rights rest with the individuals. The community can influence how the land is released and worked. For the past year or so, the commission has been working with Highland Council on the local plan for Kyle of Lochalsh and Skye. That experience suggests that a third of crofting townships were willing to work with the commission to consider where land could and should be released for development. The others were less interested, but one third is not a bad level of engagement.

Maureen Macmillan: But that is a difficulty.

Shane Rankin: Indeed.

Mr Morrison: I have a question for Mike Watson. You are described on the agenda as the bill manager. I take it that that means that you oversee everything that is done in the Executive's name, as it were.

Mike Watson (Scottish Executive Environment and Rural Affairs Department): Yes. My main responsibility is for the logistics of seeing the bill through its parliamentary stages to ensure that the policy that is worked through meets the requirements of both the Parliament and ministers.

Mr Morrison: Are you satisfied that the consultation analysis document is a fair and, more important, an accurate reflection of the views that were expressed at public meetings?

Mike Watson: I do not want to duck the question but, unfortunately, the consultation happened prior to my taking up my role as bill manager. I will ask Shane Rankin to answer the question.

Mr Morrison: Why would he be in a position to answer it?

Mike Watson: He has been the bill leader from day one. I took over as bill manager on 17 January. The consultation analysis was done prior to that.

Mr Morrison: Mr Rankin, is the consultation analysis document a fair and, more important, an

accurate reflection of what crofters, practitioners and others said at the various meetings throughout the crofting counties?

Shane Rankin: It does not purport to be a collection of everything that was said at every public meeting.

Mr Morrison: I did not ask whether it was that. Is it an accurate reflection? It is not a minute or a verbatim report, but does it accurately reflect the views that were expressed by crofters and others?

Shane Rankin: The consultation as a whole, yes.

Mr Morrison: In that case, the Scottish Crofting Foundation has got it wrong.

Shane Rankin: In what respect?

Mr Morrison: It believes that the consultation analysis does not accurately reflect what was brought out in the public meetings.

Shane Rankin: I do not wish to play with words, but the public meetings were an effort to engage the public in considering what was in the draft bill. The meetings were not an attempt to elicit opinion on the bill. The bill is a complex document. It is unlikely that one would get considered views on its contents on the basis of a half-hour presentation and a couple of hours of debate and discussion. The analysis is an accurate reflection of the consultation. The public meetings were an effort to encourage reaction to the bill and substantial responses were made in writing after the public meetings.

Mr Morrison: I put it on the record that I do not accept the veracity of much of the report. Frankly, it does not reflect the views that were expressed by people who represent the Scottish Crofting Foundation.

I have a couple of questions for Mr Rankin about what he said in his opening statement. You said that the bill would encourage asset stripping. What does that mean?

Shane Rankin: Discourage.

Mr Morrison: I meant discourage, sorry.

Shane Rankin: In my response to Maureen Macmillan's question a few moments ago, I explained that there are occasions on which absentees seek to ensure that they profit from the croft before their tenancy is terminated. The proper occupier proposal creates a mechanism to avoid that.

Mr Morrison: In what way?

Shane Rankin: It ensures that, if the owner of the croft does not live on or near the croft or work it, they can be challenged at an early stage by the commission.

10:30

Mr Morrison: Another fundamental matter that has been the subject of much comment is that of assignments being sold. Can you assure me, and more important, the people I represent, that if the bill were to be passed in its current form, crofts would not change hands for £86,000 or £96,000 as opposed to £6,000?

Shane Rankin: At the moment, some crofts are exchanged for a few thousand pounds whereas others are exchanged for substantially more. Crofts vary hugely in terms of the quality of the land and even the assets that are on those crofts—houses are associated with the most expensive crofts. It has been possible to sell croft tenancies for many years and the bill does not set out to prevent that.

Mr Morrison: I have a final question about Mr Rankin's role. I know that this might be unfair, but these evidence-taking sessions are not meant to be about fairness. You are head of crofting policy as well as chief executive of the Crofters Commission.

Shane Rankin: Yes. I even volunteered to do this.

Mr Morrison: Are the roles compatible?

Shane Rankin: Yes, entirely compatible. Current legislation requires that the Crofters Commission provides advice to ministers. It is therefore entirely reasonable that the chief executive of the Crofters Commission is an adviser to ministers.

Mr Morrison: And heading the bill team?

Shane Rankin: I take the senior civil service lead on the bill. What is more important about my role is that a senior civil servant with considerable knowledge of crofting law and regulation is involved in developing the bill. The bill would be disadvantaged without that knowledge and experience. It is probably fair to say that that applies elsewhere in the senior civil service.

Rob Gibson: I follow on from some of Alasdair Morrison's latter points. You have been in charge of the Crofters Commission's activities in recent years and now you are making suggestions about how its powers should be enhanced. How did the commission tackle the transition from what was an agriculture-based activity in the 1960s and 1970s to the multiple uses of crofts today?

Shane Rankin: I am not sure that I follow the question—did you ask how the commission tackled the period in the 1960s and 1970s?

Rob Gibson: How are you tackling today the issues that arise for crofters of the many more potential uses for their crofts compared to those available in the 1970s?

Shane Rankin: In terms of what the bill proposes?

Rob Gibson: It has to be in terms of what the bill proposes.

Shane Rankin: Okay. The bill makes it clear that other uses for crofts are legitimate, reasonable and acceptable and provides support for those uses. It recognises the reality in crofting communities that many other economic activities need to be undertaken and that crofters have a fundamental asset in their land that can be used by them in an economic way. In that sense, the bill liberalises the situation.

The bill does not propose to abandon agriculture because it is likely to be the significant use of that land for a long time to come. We are talking about something like 600,000 hectares of land—that land will not be overwhelmed by industrial units or whatever else. However, other land-based activities have been encouraged. Forestry has been encouraged in the past decade and receives further encouragement today and there are other potential uses of that kind.

Rob Gibson: You stated in your opening remarks that the opinions of people in townships are important to the creation of an appropriate policy for today. Why, when the submissions were received, did you ignore the calls for crofters in the crofting areas to be given the right to decide on township plans and the creation of area policy, for example?

Shane Rankin: I think that I said that the proposal to delegate regulation to local townships, which had been in the white paper, was dropped from the draft bill. In their responses, crofters did not show that they wanted that power or responsibility.

The Crofters Commission conducted a pilot experiment in three townships—I think that it was four or five years ago—with the aim of establishing whether people wanted to become involved directly in handling the regulatory cases for their township. Two issues emerged: the first was that crofters were very uncomfortable about making regulatory decisions that could be significantly to the disadvantage of their neighbours and thereby creating disharmony in the community. The second issue was a practical one. As some of the most significant transactions do not happen very often, a level of expertise could not be readily built up in the township. Many practical issues were raised; there was no community force for the power to continue into the bill.

Rob Gibson: Accepting the fact that people feel uncomfortable about taking decisions about what happens to their neighbours, what is the future role for decision making that fits the needs of wider areas such as Shetland or west Lochaber?

Let us think about the potential in those wider areas. In their submissions, people suggested that that might be the appropriate level at which policy should be developed. I do not see anything in the bill about that, however.

Shane Rankin: The bill proposals allow for local policies to be made at the level of the individual township—I think that it is either one or two townships—and by a greater number of townships. Local policies can be made at whatever level people consider is the most appropriate; for example, at the level of the Isle of Lewis, the Western Isles or Lochaber. The policy is not intended to be driven by the demands of one township.

Rob Gibson: What measures does the bill contain to enable crofters to make and agree those policies at an area level?

Shane Rankin: The bill proposes the creation of local panels to consider crofting issues. I suspect that those panels will be the force that will drive the level at which local policies will be determined across the crofting counties.

Rob Gibson: And the panel will be appointed by headquarters.

Shane Rankin: Yes. The panel will be appointed by the Crofters Commission.

Rob Gibson: So it will not necessarily be representative of the opinion in the area.

Shane Rankin: At the moment, the commission has a network of assessors—I think that there are about 80 of them—who represent all the crofting areas. Certainly, the assessors see themselves as representative of the crofting areas in a significant way. Many of them have been with us for years; some of them for decades. I suspect that anyone who was willing to come forward and work on a panel and be representative of their community would be a strong advocate of that community.

Rob Gibson: But you are talking about people being appointed, not elected. Such a proposal is not about the creation of a force from below to take forward decisions on crofting in an area; it is about appointments coming from the commission.

Shane Rankin: Yes, but bear it in mind that the commission and the bill seek to balance a number of interests and not simply to respond to those who are particularly active in crofting. Other issues are at stake.

Absentees have an interest, which must be handled. Many communities have inactive crofters and even shareholders of common grazings who do not think of themselves as crofters but who have an interest in how crofting operates in a community. Some of those inactive crofters are becoming much more interested in crofting as

wind farm developments are proposed. A variety of interests needs to be respected and reflected, so it is not just a matter of choosing representatives for a local panel from people who are active and want to be elected.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): You said that the Crofters Commission takes its lead from legislation, but I presume that you have quite a lot of discretion in how you discharge your responsibilities.

Shane Rankin: We have some discretion.

Mr Ruskell: From whom do you take advice on how to exercise your responsibilities?

Shane Rankin: Advice comes from the commission's board, from local assessors to a degree and from the Scottish Executive, in the sense that the commission operates schemes as an agent of the Scottish Executive. In future, the commission will determine its own grant schemes and will take its own counsel on how to focus and target such pieces of work.

Some of the commission's development work is guided by what communities want and ask the commission to do. Some of the most significant development projects have involved communities asking us to reorganise croft land, for example.

Mr Ruskell: How does that happen? Do you hold public meetings?

Shane Rankin: We have a series of development managers throughout the crofting counties who are actively involved with crofting communities in a variety of ways—through grazings committees, initiative at the edge, contact with local enterprise companies and local agricultural offices.

Mr Ruskell: What direct feedback have you had from the various players on how you interpret the provisions on assignments?

Shane Rankin: They are content that the right to assign should remain in play and remain a fundamental right for crofters.

Mr Ruskell: Have you considered a directly elected commission?

Shane Rankin: That was suggested in the consultation on the draft bill but was not developed, for a variety of practical reasons.

Mr Ruskell: Will you explain them?

Shane Rankin: The commission is a relatively small organisation. Under current legislation, the board has executive responsibilities that are not in keeping with those of a modern quango, in which a board's role is predominantly to scrutinise and oversee the actions of the management and the organisation. The election of board members

would create several practical issues. Would the board have to be significantly larger? Would the board have sufficient business to undertake? What would be the cost? Who would elect the board?

Mr Ruskell: Given that the commission is for crofters, I would have thought that crofters would be the electors.

Shane Rankin: Which ones?

Mr Ruskell: I have a further question. The bill creates a proper occupier condition—it says that crofters must put the land to "purposeful use". What is the definition of that? Does it mean quad biking or keeping a pony in a field?

Shane Rankin: I am trying to remember the precise definition; perhaps one of the lawyers could remind me of it. The term concerns the use of land purposefully.

10:45

Mr Ruskell: Is that equivalent to land-based enterprises?

Shane Rankin: Yes, it could be.

Mr Ruskell: It could be.

Shane Rankin: Yes. I am reluctant to give you a definition because I know that there is one in the bill, but I cannot quote it off the top of my head. We can send the definition to the committee.

The Convener: We are keen to have it. The issue is a key one, which will be brought up at stage 2 rather than at stage 1. It is important that we have the definition on the record so that when we take evidence from other witnesses everybody knows what a proper occupier would be and how that would be defined.

Shane Rankin: Would Ethel Burt like to comment?

Ethel Burt (Scottish Executive Legal and Parliamentary Services): Yes. I can read the definition from the bill.

The Convener: Where are you reading from in the bill?

Ethel Burt: Section 11(2). The section amends the statutory conditions in the 1993 act.

Mr Ruskell: Does the section define "purposeful use"? It refers to a croft being put

"to some other use, being a purposeful use".

Ethel Burt: Further down the page, proposed new paragraph 3A of schedule 2 to the 1993 act states:

"The croft shall be kept in a fit state for cultivation except in so far as a use to which it is put by virtue of paragraph 3(b) above is incompatible with its being so kept."

Below that, proposed new paragraph 3B refers to measures to

“control or eradicate vermin, bracken”.

It is a general definition.

Mr Ruskell: So as long as the land is fit for cultivation any use is acceptable.

Ethel Burt: That seems to be right, but the definition is not specific—it is general.

Shane Rankin: An issue that emerged in the consultation was the impression that had been created that a purposeful use other than agriculture would in itself be enough to satisfy the statutory conditions. That gave the impression that the rest of the croft did not have to be cultivated or maintained, which was not the intention of the proposal in the draft bill. Therefore, it has been made clear in the bill that although a purposeful use other than agriculture on a part of the croft would be acceptable, the rest of the croft either has to be used for agriculture or has to be capable of being used for agriculture. It has been made clear in the bill that has been introduced that it is not a matter of discouraging agriculture by allowing a “purposeful use” on a little corner of the croft.

Ethel Burt: Section 11(2)(i) adds to paragraph 13 of schedule 2 to the 1993 act the provision that

“‘purposeful use’ is any planned and managed use, being a use which subject to the exception in paragraph 3A above, does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.”

It is a wide definition.

Maureen Macmillan: As “purposeful use” is being defined by what it is not rather than by what it is, the scope for what it could be is wide.

Ethel Burt: Yes.

Maureen Macmillan: I think that members want examples of what the uses could be.

The Convener: We want a sense of how the definition would apply in practice and examples of what it would mean in given circumstances.

Shane Rankin: The uses could include management of the environment, use by quad bikes, the establishment of a tourist attraction or forestry. It could be use for a business activity that might involve structures being put in place on part of the croft. Essentially, it could be anything that uses the land in a productive way.

Elaine Smith (Coatbridge and Chryston) (Lab): Proposed new paragraph 3A of schedule 2 to the 1993 act states:

“The croft shall be kept in a fit state for cultivation”.

If the land were being used for quad bikes or wind farms, would that qualify as keeping it in a fit state

for cultivation, or would it have to revert to such a state? I do not understand the provision.

Shane Rankin: The rest of the land would have to be fit for cultivation.

Elaine Smith: So only a bit of it would have to be used for that purpose.

Shane Rankin: All or part of it.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have a real dilemma in respect of the bill, because I have heard so many conflicting views on what it is intended to achieve, not least from ministers. Rhona Brankin is on record as saying that it contains no new freedoms in relation to buying or selling crofts, but her boss Ross Finnie says that the Executive has no right to interfere in a free market of crofting land and that crofters should be allowed to cash in on their assets—I think that I quote him correctly. Who is right? Is crofting land held in custodianship, or is it the property of the individual, to do with as he or she wishes?

Shane Rankin: There are two questions. Both ministers are right. For many years, crofters have been entitled to sell on their assignation, if they wish. That was encouraged in the early 1960s as a mechanism for encouraging older crofters to give up their crofts to ensure that they got a reasonable return from their effort and had some incentive to release their crofts. There is no conflict between the ministers’ comments. There is no new free market in crofting.

Mr Brocklebank: How can there be a free market when people acquire their crofts at a rock-bottom price and, some five years later, can sell them for the kind of sums that Alasdair Morrison described? Surely that is a skewed market.

Shane Rankin: What you say about buying the croft and selling it on is different from what Alasdair Morrison talked about. He was referring to the tenancies that are being sold. That has happened for decades—there is a right to assign the tenancy. However, the market cannot be free if there are restrictions on the transfer and if there are obligations that the outgoing and incoming tenant must fulfil. There is a market, but it is restricted. There is a degree of regulation, although the accusation is that regulation is not sufficient.

Mr Brocklebank: In recent times, the Crofters Commission has taken to arguing that its powers are inadequate and that it cannot be held responsible for the erosion of crofting communities through the transfer of tenancies to non-crofting hands. Should not the bill seek to address the powers that you have and, perhaps, to improve them? Should it not at least test whether you have those powers? Would not that be better than

saying that you do not have the powers, throwing up your hands and saying, "Let things rip," as you appear to be doing?

Shane Rankin: The bill addresses the powers that the commission has and should have. The Executive and the commission are not throwing up their hands. We could take a different approach, be totally draconian and say that there is no discretion in anything. We could take the approach of saying that an absentee is an absentee and that assignments should not be sold. However, for whatever reason, we are where we are with the legislation and the crofter's right to buy exists. Crofters value that right, more in some communities than in others. There is only 1 per cent owner occupation in the Western Isles and 30 per cent owner occupation in Shetland. The overall figure is heading towards 30 per cent. There are different expectations and uses of the rights, which exist first and foremost to protect crofters against awkward or difficult landlords. That is why they are there and need to remain.

Taking away the discretions that exist would create unnecessary difficulties in communities. It would encourage a degree of disruption and disharmony in communities, as some crofters vied for more crofts than others. It would also make it difficult to take a sensitive and humane approach to the circumstances in which some people find themselves. There are absentees who have become absentees for practical reasons. They may have had to go away to find a job because there are no local jobs, and may come back from time to time. One could be absolute about absentees and say, "It does not matter if you are an absentee for two weeks or two years—you are still an absentee and you have no rights," but discretion is fundamentally important, and that is the thrust of the bill's approach.

The bill will create a much simpler bureaucracy that avoids regulating everything. At the moment, the Crofters Commission regulates around 2,000 transactions a year, around 200 of which are difficult, one or two of which make the press. Therefore, around 1,800 applications are straightforward, but they involve a huge amount of official time and public money, which would be better spent on the approach that the bill proposes to encourage the development and creative use of powers to get communities to use land productively, to challenge neglect and absenteeism sensitively, and to ensure that owners do not abuse their position—I refer to the proper occupier proposals. There is a balance in the bill and an approach that is appropriate for the times in which we live.

Nora Radcliffe (Gordon) (LD): I want to move on to a different aspect of the bill: the creation of new crofts, particularly outwith the crofting

counties. The bill states that new crofts may be created in an area that is specified by an order. What sort of area is that likely to be? Is it likely to be a county or the area within a local authority's boundaries? The wording is imprecise.

Shane Rankin: It is a loose term. The aspect of the bill that you mention was a reaction to the strength of opinion that was shown in Arran during the consultation. There was also a reaction by members who represent north Perthshire and Aberdeenshire when the Deputy Minister for Environment and Rural Development gave evidence to the committee. They thought that there was scope to use crofting as a device to encourage rural development in their communities. The bill allows for the extension of crofting tenure to places in respect of which an argument for extension can justifiably be made and does not put limits on what an area can be. Arran is an obvious self-contained area that might be one of the first areas to come forward.

Nora Radcliffe: Do you envisage an area, for example in the north-east, being a county or local authority area? Could Aberdeenshire or Moray be an area?

Shane Rankin: I suspect that an area will be smaller than that. It could be Strathdon or an area in which there is an issue. It is more likely that an area will be somewhere where there is an opportunity, a pressure or a willing landlord to work with people. Land for which Government ministers are responsible could be a target. I suspect that it is a question of opportunity.

Nora Radcliffe: I would be interested in having an indication of the benefits and disbenefits of having a crofting tenure as opposed to having small landholder status. Might the lawyers with you like to expand on that?

Shane Rankin: It is probably not so much a legal question as a policy question. People in Arran certainly perceive there to be an opportunity to be connected with the right to buy and to access housing and other grant schemes that are available to crofters but are not available elsewhere. Those are the fundamental attractions.

Nora Radcliffe: So there are attractions for tenants and landholders, but are there disbenefits for landowners?

Shane Rankin: Landowners may see a disadvantage in part of their estate being taken away, but the bill makes provision for a compensation device for landowners who are affected by anything that might emerge under that provision. Therefore, the disadvantages should not be significant.

Nora Radcliffe: The commission will have the final say about whether an application will be

accepted. Would one of the criteria it considers be the effect on, for example, an estate or surrounding landholdings?

Shane Rankin: The general approach is for the commission to consider the interests of the individual, the landlord and the community. That will continue.

Nora Radcliffe: So we must watch this space.

Shane Rankin: Yes.

11:00

Elaine Smith: I would like to explore one or two issues that have arisen from what has been said so far. I am interested in the whole issue around why the proper occupier proposals were made later in the process. In particular, I am interested in going back to the question that Maureen Macmillan asked at the beginning of the session. What is your vision for the crofting system under the legislation? Is it to be a free market or will it be more regulated and go back to the basics of crofting law, which were to give a family security of tenure at a reasonable rent?

Shane Rankin: As I said in my opening remarks, crofting has been very valuable over many years and has sustained the population of many of the remotest communities in Scotland. It has also sustained agricultural activity and environmental biodiversity. Those things are and will go on being very valuable.

The crofting tenure system has contributed significantly to those communities and it needs to go on doing so, but some of the obstacles created by the legislation and the regulatory processes should be tempered. They might not need to be removed but they should be balanced and tempered in a way that allows the system to encourage initiative and to release opportunity in crofting communities without taking away the fundamental rights of individuals and the inherent strength of the community. There are strengths in the common grazing system, the grazing committees and the rest of the crofting system, and all of those need to be sustained and supported.

The bill seeks to manage the regulatory processes and thereby to enable the system to thrive. It is not saying, and it cannot ever claim to guarantee, that the crofting system or communities will prosper, but it will release opportunity and create devices to allow the Crofters Commission to devote its resources much more creatively than it does at the moment.

Elaine Smith: You seemed to indicate that the right to buy is an issue. If I am right, you said that we are where we are with it. Could you have changed that with this legislation if you had

wanted to? Can you change it? Do we have to be where we are?

Shane Rankin: By that I meant that the right to buy a croft has existed since the 1970s and the right to assign has existed since the 1960s.

Elaine Smith: If you saw the right to buy as causing any problems with what you are trying to achieve, you could have revisited the issue through the legislation.

Shane Rankin: Theoretically, the right to buy could have been removed, but that would not be welcomed nor would it be successful. It would put the power back into the hands of landlords to the disadvantage of many crofting communities.

Elaine Smith: You cannot just say that we are where we are, because you could have revisited the issue if you had wanted to.

Shane Rankin: We cannot force the 30 per cent of owners back into the system, if you like, other than by beginning to apply the same types of condition that apply to croft tenants. That is what we are doing through our proposed mechanism.

Elaine Smith: I have another couple of questions I would like to ask you, although I would have liked to explore that issue a bit further.

On the issue of a veto, you said that the commission cannot dictate to whom a croft will be assigned; it can only exercise a veto. Surely the power of veto should mean that the commission can dictate. How many vetoes have there been? Could not the Crofters Commission continue to use its veto until someone suitable was assigned? I ask you that because I do not understand what you mean when you say that the commission only has a power of veto. That seems to me to be quite a strong power.

Shane Rankin: The question is whether the Crofting Commission can go on vetoing assignments. In the current circumstances, one challenge is that croft tenancies have attracted much more interest in the past few years than they have for many years previously. The level of interest varies from community to community and it has varied for a long time.

The power of veto was given so that we could avoid some of the worst excesses. When the right to assign croft tenancies was granted back in the 1960s, there was no queue of people to take up croft tenancies. Even up until the past few years, the level of demand for croft tenancies was nothing like it is at present in some places. However, even now some crofts lie vacant because they are in places where it is not feasible for people to make the croft work or to establish a life in the community. Therefore, the level of demand varies hugely.

We could go on vetoing people, but the question is whether we would achieve much if we vetoed every individual until we reached the perfect candidate. What would constitute a perfect candidate?

Elaine Smith: That is what I am asking. Surely that is why the commission has a power of veto.

Shane Rankin: The bill does not specify what the perfect candidate might be. Should it be the person who will use the land agriculturally or the one who will live on the croft? Should it be the person who already has 10 crofts or the one who has no crofts? How should the criteria be balanced, given the opportunities and rights that belong to crofters in such situations?

Elaine Smith: Convener, I have one last question, but I think that Alasdair Morrison wants to ask a supplementary question on the power of veto.

The Convener: The problem is that our evidence session has already gone on for an hour. I sense that all members would like to ask supplementary questions.

Mr Morrison: Convener, I just want to make an observation—

The Convener: I will allow a point of clarification, but I do not want any supplementary points.

Mr Morrison: I point out that the issue of the veto, which Elaine Smith raised, and the issue of the commission's composition, which Mark Ruskell raised, demonstrate the absurdity of Mr Rankin's role—

The Convener: That is not a point of clarification. You have already made that point pretty effectively.

Elaine Smith: My final question concerns the Scottish Crofting Foundation's submission to the committee. The submission states:

"the SCF submitted a response that contained 23 suggestions for improvement of the draft Bill—these have been largely ignored."

Why were the SCF's suggestions ignored? Were they not good suggestions?

Shane Rankin: I am not sure that that is correct. The SCF's submission contained 23 points, which have been reduced to something like 11 for its submission to the committee. We took up a number of the SCF's suggestions.

Elaine Smith: I quoted from the SCF's submission to the committee. Perhaps we can clarify the issue with the SCF.

The Convener: I want to ask about planning, which is also mentioned in the Scottish Crofting

Foundation submission. There seems to be a fundamental relationship between crofting legislation and planning legislation, given the huge pressures for housing that are driving up prices. If there is to be a free market, should people who want a house in a crofting area need to be a crofter or should they be able to buy croft land merely to occupy the house, with the result that local people who want to croft have no access to affordable housing?

In the bill, the relationship between crofting legislation and planning legislation is unclear. Local policies are to be developed, but I do not see the read-across to the planning system that would be necessary for implementing them. That issue came up when we inquired into accessible rural housing last year. There seems to be no link between crofting and planning policies for local affordable housing and I cannot see any such links in the bill.

Shane Rankin: The question is whether planning or crofting legislation is predominant. In the context of determining where development should take place, planning legislation rather than crofting legislation is predominant.

The Convener: Surely the Taynuilt decision flags up the issue of the kind of housing that should be built.

Shane Rankin: I do not quite follow the question.

The Convener: In that area, affordable housing was not seen as relevant, so luxury housing was built. The connection with crofting was not seen as relevant at all. The two systems seemed to be totally different, with no link between them.

Shane Rankin: Yes, but under the bill the Crofters Commission will be responsible for regulating and developing the crofting system and the use of crofting land. It will not determine affordable housing or planning policy, although it will be able to contribute to those aspects through local policies. Indeed, the commission's work over the past year or two has demonstrated that ability.

The Convener: Should you be a statutory consultee on planning applications to ensure that you can make such an input?

Shane Rankin: That proposal has been explored with Rhona Brankin and Malcolm Chisholm and I am sure that it will be explored further by Mr Chisholm as consideration of the Planning etc (Scotland) Bill progresses. However, I gather that the issue of who will be consulted will be worked through in secondary legislation, not set out in the bill itself.

The Convener: Those of us considering the Crofting Reform etc Bill feel that the whole system links together. Indeed, one key point that has been

raised with us is that, because the price of crofts has increased so much, people who live in crofting communities cannot afford them. I am trying to tease out the links between all these crofting, affordable housing and planning issues; who is responsible for which element; and the opportunities that the bill provides to let people live in rural areas that will otherwise become depopulated.

Shane Rankin: The difficulty with the housing and planning elements arises partly because, in many communities, crofting land is often the only land that planning authorities consider to be suitable for development. Because no other land is available, there is pressure to ensure that that land is released for housing. Planning authorities are invariably liberal in their approach to new housing because they want new people in these communities. Indeed, one might say that, at Taynuilt, the authority took a liberal approach when it supported a planning application for new housing on croft land.

The bill's local policy mechanism will allow and encourage the Crofters Commission and crofting communities to build on the commission's work over the past few years in helping communities in Kyle, Stornoway and even Shetland to decide where they want housing to be developed. Some communities have said that they want housing to be developed only on common grazings. However, because that is not always practical, some compromise is necessary. That is what happened in 30 out of about 100 community townships in the Kyle local plan area.

However, in Knock and Swordale on the edge of Stornoway, the community and the common grazings committee want housing to be placed first on croft inby land, not on what is called the inner grazings, which is a relatively small amount of land that sustains collective agricultural activity. The community has chosen where the housing should be developed, and our engagement with it has helped to resolve some fairly significant tensions about housing and has allowed the community to say to the planning authority, "This is where we want the housing to be developed and we want your local plan to reflect that." The planning authority now has to figure out whether what the community wants is feasible.

However, as I have said, the role of the Crofters Commission and the bill is to assist communities in reaching an understanding of and articulating to the planning authority what they want. With the bill's local policy mechanism, the commission's ability to do so will be even stronger.

The Convener: Eleanor Scott has not yet asked a question.

Eleanor Scott (Highlands and Islands (Green): Thank you for giving me the opportunity to ask questions, convener. You have already asked one of my questions, so I will be quite brief.

What do you expect to be the practical implications—and, I presume, advantages—of the Crofters Commission becoming a non-departmental public body?

11:15

Shane Rankin: As members can see, the commission is very close to the Executive at the moment. Its scope for varying its approach to grant schemes and so on is negligible. The Executive operates significant grant schemes for crofters, including housing schemes, agricultural schemes and cattle schemes, but the rules and focus of those schemes are determined by the Executive and have a one-size-fits-all approach throughout all crofting areas. There are many other ways in which crofting could be encouraged to develop. The commission has been close to the croft entrant scheme for many years. That scheme is funded by Highlands and Islands Enterprise and increasingly by some of the local authorities and it has had a significant impact. A more independent commission than we have at the moment could come with creative schemes of that type.

Eleanor Scott: Do you mean independent of the Executive?

Shane Rankin: I mean independent of direct, day-to-day control and influence by the Executive over those major sources of funding.

Eleanor Scott: And no less independent of the body of crofters than it is at present. We have heard that you are not proposing direct elections. At present, it is possible for a crofter to become a commissioner, but will they be able to take up whatever position will exist when the commission is a non-departmental public body?

Shane Rankin: A board member.

Eleanor Scott: Yes.

Shane Rankin: I am trying to figure out how many of the board members are or have been crofters. The answer is quite a few of them, if not most of them. One would expect board members of the new commission to have a strong crofting connection or to be crofters themselves. I would be amazed if crofters did not come forward to become board members.

Eleanor Scott: How much say will the board members have about the direction of the body?

Shane Rankin: The role of the board in an NDPB is to consider strategy and direction and oversee the organisation. The board considers whether the organisation is going in the right

direction and doing the right things. The new board will have much more latitude to do that than exists at the moment.

Eleanor Scott: What about the accountability of the board and the body?

Shane Rankin: The management and the organisation are accountable to the board. What invariably happens with an NDPB is that ministers provide strategic guidance to the board. Annually—or periodically—ministers say, “We want you to do these big things. We want you to address these big issues.” I expect that that approach will be taken in this case.

Eleanor Scott: Will the board members be appointed by the minister?

Shane Rankin: I am trying to remember. The chairman and the board members will be appointed by the minister.

Eleanor Scott: Do you think that there is a shared understanding between you, those who gave evidence and the committee of what crofting is and should be?

Shane Rankin: No.

The Convener: Perhaps we can explore that as we take evidence in the next five weeks.

I sense from everybody’s body language that if I gave colleagues another go, they would all have more questions. However, this is the first of our three panels today. If members have burning questions, they are likely to be relevant also to the second and third panels—

Rob Gibson: I think that the Crofters Commission will be coming back to give evidence again.

The Convener: Yes. This is not our last chance to discuss the national, strategic approach in the bill. I have tried to be generous to members—whether or not they think that I have been—and to let them ask all the questions that they had for the first panel. I knew that there would be a lot of questions.

I thank the first panel for coming to answer our questions this morning. If we come up with extra questions in the next few weeks, we will come back to you and ask for more information on particular sections before we compile our report. In particular, we will consider the responses to Mark Ruskell’s questions about definitions and decide whether we want any more information on that.

I ask the second panel to come to the table. We will have a brief, two or three-minute suspension.

11:19

Meeting suspended.

11:25

On resuming—

The Convener: We will now hear from the second panel of witnesses. For those who are watching the proceedings remotely, I mention that I had a sense that the coffee session that we have just had could have continued all day. A lot of networking was going on. We might try to capture the spirit of that over the next few weeks, so that people talk to one another. However, I want to get on with hearing from panel 2 now.

Derek Flynn is a specialist crofting lawyer. He is a consultant with Macleod and MacCallum, a firm of solicitors in Inverness. Brian Wilson, the former minister, is a frequent writer on crofting in the Scottish press. Professor Jim Hunter is both a crofting historian and writer and a former chair of Highlands and Islands Enterprise.

As with the previous panel, a few committee members have already indicated that they want to fire off with questions. Before that, I thank the witnesses for their written submissions, which we received in advance of the meeting. They were extremely helpful and went straight to the point. Members will want to follow up on a number of issues in their questioning. Thank you for taking the time to write down some remarks in advance. I will not ask you to give opening statements—we do not usually do that on this committee. We will crack on with the questions.

Rob Gibson: Derek Flynn has commented in his submission:

“The law of crofting is unusual if not unique. It is the law of a different land. But that land does not have uniformity.”

Brian Wilson has written:

“What is essential for members of the Committee to understand is that crofting is, and can only be, a regulated form of tenure which requires tenants to observe certain defined conditions”.

Jim Hunter also comments on the matter of diversity. Could the panel reflect on how we can ensure that what we have inherited, which is a mixed system of ownership and tenancies, can be regulated properly in this century?

Derek Flynn (Macleod and MacCallum): I feel that the register of crofts is the most important tool. At present, we have a strange system, which is not easy for lawyers working outwith the system to understand. It is a mixed system. It is based on acts that recognise the agricultural tenancy of land. However, that is no longer what the system is. The current legislation recognises a relationship between landlord and tenant—that is all that the crofting acts consider. Any crofters who have purchased their land under the provisions of 30 years ago receive very little guidance as to what they should be doing.

The register of crofts is looked to by all parties to contain a lot of information that it does not in fact contain. Primarily, lawyers are interested in identifying the subjects involved, but there are no maps available from the Crofters Commission. After 50 years of administering 17,000 crofts, one would expect the identification of those crofts to be quite clear, yet it is not. The register of crofts should also identify the person who is responsible for the land.

As I have said, we are talking about a mixed system in which some people are tenants. If the register of crofts identifies who the tenant is, that is pretty clear, but when land passes into the ownership of the crofter as a result of his exercising his rights, it is difficult to trace who is responsible for the land and who should be occupying it.

11:30

Crofters and landlords approach the Crofters Commission for information about land that, in law, is the subject of a contract between the landlord and the tenant. Most contracts are in writing and are certain, but crofting contracts are rarely in writing and are often uncertain. When the Crofters Commission took on the role of administering those relationships, the landlord was no longer responsible for knowing the boundaries of the land that he was renting out and no longer had an interest in pursuing the tenant because, if he did, he would only get another tenant who paid the same low rent. It was suggested that the crofter was to buy his land at a rock-bottom price, but that is the wrong way of looking at the situation. What the crofter is doing is buying out the landlord's interest, which is to receive a rock-bottom rent. To give the landlord 15 times that rock-bottom rent is a sensible way of moving forward and removing the landlord from the system.

When I started practising crofting law, the Crofting Reform (Scotland) Bill was on its way. The Crofting Reform (Scotland) Act 1976 gave every crofter the opportunity to buy his land and to buy out the landlord's interest, rather than to become the owner of his own land but, in my view, the system should allow a crofter to own his own land and to have it protected by the system. At the moment, if there is a dispute about boundaries, it is often a dispute between neighbours rather than between landlord and tenant. If a crofter owns his land, he has some certainty about what he has purchased.

The link between housing and crofting is very strong. When crofters were given the right to buy, they were given the perfect right to buy—the right to buy the site of their dwelling-houses. However, croft houses are almost always decrofted, by which I mean that they have been removed from

their crofts. That is because, to build a new house, a crofter has to borrow money and the only way that he can borrow money is to have the site of his dwelling-house decrofted and mortgaged in the normal way. Since 1976, croft houses have been detached from crofts. To require that people remove their house from their tenanted croft—in other words, decroft it or remove it from the system—before they will get the funds to build a new one seems to be a strange way of proceeding. That means that many houses in the crofting areas that are inhabited by crofters are not part of the system. What we are really protecting is the land that is left.

The Convener: You covered quite a lot of ground. I will let the other two speakers respond before letting Rob Gibson come back in.

Brian Wilson: I agree with everything that Derek Flyn said about a register of crofts. It seems remarkable that the Crofters Commission has signally failed to maintain a register. I would have thought that in order to regulate a system, one must first know the definitions of that system and then maintain an updated record of the people who came in and out of it.

I am not being pedantic, but the question that Rob Gibson asked contained an understandable error: it assumed that owners and tenants are two different breeds. As Derek Flyn has said, every croft has an owner and every croft has a tenant, even if, in practice, they are the same person. That goes to the nub of much of what has been discussed.

I want to pick up on what Shane Rankin said when he referred to the 1976 act. The 1976 act addressed in perfect legalistic terms the issue of how owner-occupation could be combined with a system of tenure. The answer, which was energetically advocated by the Crofters Commission at the time, was that all that the tenant was buying was the landlord's rights over the croft. Therefore, in legal hypothesis, the landlord of the croft—the so-called owner-occupier—could be required to submit to the regulation of the commission in order to ensure that the croft was tenanted and other criteria were met. In a telling phrase, Shane Rankin said that, shortly after the 1976 act was passed, the commission decided that it was against the spirit of the legislation to treat the crofter as landlord and abrogated precisely the legal fiction that was the basis for its defence of the 1976 act. I suggest that the evidence that the committee is being given today about proper occupiers is just another rewriting of a legal fiction. If the commission had stuck with its defence of the 1976 act, the term "proper occupier" would not be needed.

I return to the phrase that Rob Gibson quoted. Crofting is a system of tenure or it is nothing. It is

not a collection of individuals owning little bits of land. Colloquially, it is sometimes treated in that way, but it is a system of tenure. We either regulate or do not regulate a system of tenure. In my view, there is no halfway house.

Professor Jim Hunter: I will be brief. The issue of the register is very pertinent. Both the other witnesses have made the point that it is rather extraordinary that the commission does not have an effective register. It is particularly extraordinary because that was one of the obligations in law that were imposed on the commission by the Crofters (Scotland) Act 1955, which founded it. In the 1980s, when I worked for the Scottish Crofters Union, that was one of the issues that we raised. Given the huge advantages that are afforded by modern technology in this respect and the relatively small numbers that are being dealt with, it remains extraordinary that, for more than half a century, an organisation employing so many people and with such a large budget has not been able to fulfil one of the very basic remits that were given to it at the outset. I hope that one thing will come out of the reforms that are currently proposed. In its new form, the Crofters Commission must be required by the Executive to fulfil certain obligations. Shane Rankin said that one of the differences in the new set-up would be that the commission, like other quangos, would become more directly responsible to the Executive. That is fundamental.

Another basic point arises out of Rob Gibson's question about how the system can be regulated in the 21st century. It relates to questions that members asked about the wider vision—or lack of it—behind the bill. Such a vision is lacking in the bill and much of the discussion surrounding it from the Executive side. That needs to be remedied. The main point that I have tried to make to the committee is that today crofting offers huge opportunities in respect of rural development and wider policy for rural areas. In that context, it is fundamental that we get regulation and legislation that take advantage of those opportunities and move us forward. My fundamental criticism of the bill—which, as I have indicated in my submission, contains many good provisions—is that it has started with the current legislation and regulation and sought to add a further layer of complexity to a system that is already hugely complicated.

In a better-ordered world, we would have started by identifying crofting's strengths and what it offers socioeconomically in the places where it exists and might exist, and then we would have constructed a regulatory system that allowed those strengths to be built on. I do not have the sense that the bill achieves that, which is my main criticism of it.

Rob Gibson: All the people who have made submissions have made us well aware of the vision issue.

Brian Wilson suggests that the term “proper occupier” should not be needed. What amendment would he make to the bill that would begin to make the crofting tenure work for all crofters?

Brian Wilson: I agree with Jim Hunter that other aspects of the bill are good and largely non-controversial but, on the regulation of crofting, the question is whether we need new legislation or the enforcement of existing legislation. I raise that fundamental question in my written submission. I am sorry that John Farquhar Munro cannot be here, because he has asked that question repeatedly. I quoted a good example of that. The law was not changed after 1976 to say that the Crofters Commission could not treat owner-occupiers as landlords who were their own tenants. The Crofters Commission decided not to do that—it opted out. Decade after decade, it has opted out of regulation, to the dismay of people who have tried to keep crofting communities going. We must consider whether, if the existing powers of the Crofters Commission over assignments were implemented, we would need the fancy new designations and the highly obscure and arcane definition of a “proper occupier”. That will keep lawyers busy, but what will it add to the practical application of the law? That is my starting point.

As my written submission states, the Crofters Commission now says that, even if it regulates properly, people can circumvent that by buying a croft and going to the Scottish Land Court. I find that odd because, in crofting communities, the Land Court is respected and has always been seen as the defender of crofting communities' interests and rights. We are now told suddenly that, even if the Crofters Commission does its job, simply by running off to the Land Court, someone can de-croft the land and that will be the end of the croft. If that is the case, perhaps someone should ask the Land Court whether something in the law has changed to give it that role. If so, legislation may be required on that issue.

The statistics are interesting. I think that there are about 17,000 crofting tenants and a couple of thousand owner-occupiers, so very few people have done what is complained about, which is to become owner-occupiers to avoid regulation. What will happen now is that that process will be circumvented. If tenancies are just sold to the highest bidder, people will not have to go through the process and, de facto, the free market in croft land will exist, which will be the end of the whole thing.

Rob Gibson: If that is the case and if the panel thinks that the Crofters Commission can be given

a status and respect that it appears to have lost as a result of the actions that we have discussed, will any aspect of the bill allow the Crofters Commission to regain respect in the crofting communities?

Brian Wilson: With crofting or with anything else, either a regulator regulates or there is no point in it existing and we should abandon the pretence of regulation. That is the fundamental issue that must be decided on. At present, the regulator does not regulate and the free market operates destructively in many places. The status quo is not an option. Either the regulator must regulate, or what has been legislated for will continue to drift.

I add to the points made earlier by a couple of members: is there any other example of where the principal civil servant in a Government department also runs the quango that is supposed to be independent of Government? It is ridiculous that the same guy has both roles—I am talking not about personalities but about roles. What other advice have ministers received if the Crofters Commission and the division of the Scottish Executive Environment and Rural Affairs Department that has responsibility for crofting are in the same hands? Far from talking about separating the roles, a conscious decision has been made in recent times to merge them.

11:45

Rob Gibson: Indeed—at ministerial level.

Do other members of the panel have a view on the status of the Crofters Commission and how it could be improved? Does James Hunter want reports of absenteeism to be dealt with by the end of the year? Is it about ending the practice of croft branching?

Professor Hunter: It has always seemed odd to me that the commission is simultaneously a development agency, which currently seeks to enhance its developmental functions, and a quasi-judicial regulatory body. That is one of the fundamental concerns that the bill does not get to grips with. There is an incompatibility between the two roles and I find it extremely difficult to understand how they can be combined.

The ethos of development is to engage with a community and individuals and the ethos of regulation is to stand back and take an objective view of the wider interests of precisely the same set of individuals. In the old order of things, prior to 1955, regulation was entirely in the hands of the Scottish Land Court, which dealt simply with the law and legalities. As Brian Wilson said, it has done that very well for the crofting community over a long period.

However, the commission has—and will continue to have—a blurred role, although one of the driving ambitions for the bill from the Crofters Commission is to do more development and less regulation. The commission's role needs to be teased out.

Derek Flyn: The criticisms of the Crofters Commission are caused by the diversity of the land that it deals with. The crofts in east Inverness-shire and Easter Ross are very different from the townships in the western Highlands and Islands. If we look at the statistics, we see that the Crofters Commission deals with land that perhaps has no place in the crofting system that we are considering. That land is held as single agricultural units in places such as the Black Isle, where there is close contact with Inverness and Dingwall. That is completely different from townships in Lewis, where there might be a strong community view.

The bill moves towards allowing area policies to be developed in a way that has not previously been possible. Lawyers like precedent—if something happens in one case, they want the same to happen in the next case. However, dealing with a croft in the Black Isle is completely different from dealing with a croft in Lewis. I do not think that that should be the case, but the lawyer in me says that it is a strong argument.

Mr Morrison: You will not have had the benefit that we have had of seeing the Crofters Commission's explanatory paper in the name of the Scottish Executive. It states in paragraph 8:

"Controlling the price paid for croft tenancies or crofts which have been purchased by the former tenant is impossible."

Brian Wilson says in his submission:

"the Crofters Commission has always had the duty to veto the transfer of tenancies to nominees who do not have credible status as potential crofters. It is this duty that has fallen largely by the wayside".

Has the veto been exercised properly? If not, what amendments to the bill should we consider?

Brian Wilson: I return to the question whether we need new legislation or the enforcement of existing legislation. Elaine Smith's latter line of questioning and the responses to it were interesting. I do not want to misquote Shane Rankin—that is where the old shorthand habit comes in handy. He responded that the right of veto was supposed to be used only to

"avoid some of the worst excesses."

That has never been my understanding. Criteria and definitions apply to what is expected of crofting tenants and potential crofting tenants. If they cannot, are unlikely to or subsequently do not meet those criteria, the regulator should regulate them. Otherwise, what is the point of the law and

the regulator? If a doctrine of avoiding the worst excesses is created, we must ask what the worst excesses are. Plenty of people in many crofting communities think that the commission allows the worst excesses, too.

Professor Hunter: If it is the will of the committee or the Parliament to regulate the system, it can be regulated. Nothing is impossible. I understand that in the west Highlands and the Hebrides, the biggest single concern that has been expressed in the wider debate about the bill is the strong sense of many people that something akin to a free market now operates in crofting and that, if that is left to its own devices, it will eventually be hugely destructive to the system. That is clearly the case. The wider rationale for having a crofting system is that the public, in their wisdom, wish to obtain social goods from it. If forces that are identical to those that operate outside the crofting system are simply allowed to operate in it, there is not much point in having a crofting system.

The bill does nothing about that. As Brian Wilson said, the commission could be required to enforce much more stringently the current mechanisms for controlling the price of assignments. For what it is worth, because I think that the issue is basic and fundamental and because the bill does not attempt to address it but rather avoids it, I suggest that somebody somewhere—I propose the commission, although I do not need to stick to that—should be required to report in the next few months on precisely how the system could be regulated. It is not beyond the wit of man to think of ways to do that.

I do not necessarily advocate this, but, for example, it would be possible in principle to have a set of criteria on who should ideally have the occupancy of crofts that become available. Those criteria might give a higher priority to people who are local, younger and of less financial means. That would give such groups, for whom the system is supposed to operate, a much better chance of obtaining a croft than older and wealthier people from outwith the area. At present, the market tends to privilege the latter group over the former groups, although the system is supposed to operate in the former groups' interest.

There is something to be teased out and explored, but the bill does nothing about that. The older legislation has mechanisms for dealing with the situation. In fairness to the commission, I must say that those mechanisms are complicated. Equally, the commission could be required to do more about enforcing them than it has done. As Elaine Smith suggested, the commission could, if it wished, simply continue to veto successive people until, eventually, the message got through that, unless someone who was acceptable to the

commission was nominated, it would never be possible to get a croft off one's hands. At the moment, of course, the commission does not do that, so that message is not being sent.

Mr Morrison: Jim Hunter talked about redefining the term "crofter" and Shane Rankin described the bill as tempering regulation. How could we arrive at a situation in which crofts change hands for £6,000 as opposed to £86,000? How would redefinition of the term "crofter" benefit my constituents and, more important, the generations yet unborn?

Professor Hunter: The suggestion that I have made is pretty radical, but it is an attempt to grapple with the fundamentals of the situation. As I said in my submission, most people in Scotland—if they think about crofting at all—tend to imagine that a crofter is one individual, plus his or her family, living on one croft and that the system has been created to protect their position. Certainly, that is what drove the system in the 1880s, when it was put in place by Government in the first instance, in response to crofting demand. However, in the course of the 20th century, all sorts of anomalies have appeared, the most glaring of which is the absentee tenant.

The original legislation did not even contemplate the possibility that there could be an absentee tenant; such a thing seemed impossible. Someone was either a crofter on a croft or they were not; it was as simple as that. I am saying that instead of endlessly elaborating hugely complicated procedures that Shane Rankin and his colleagues can manipulate over months and, in some cases, years, we should simply go back to basics and say that someone is a crofter if they live on a croft and that someone who does not live on a croft is not a crofter.

I think that it was Shane Rankin who said that that is all very well, but someone might go away for a fortnight, on holiday or to work. For example, someone in Lewis might work in the oil industry in Azerbaijan. I am talking about people whose principal home is on the croft. As long as their principal home continues to be on the croft, it is not a concern that economic circumstances might force them to work in Azerbaijan for 11 months of the year, whereas having one's principal home in Glasgow or New York, for example, is fundamentally incompatible with crofting. In my view, there should be no such status as the absentee crofter. I recognise that that is a pretty absolutist stance to take, but it cuts through the morass of hearings, organisations, committees, responses and submissions. My proposal might not be attractive to Derek Flyn and his colleagues, but it would certainly simplify the system a great deal and take it back to what it was originally.

It is worth making the point that one must take account of the wider circumstances. Absenteeism did not matter all that much in the 1930s, the 1950s or even the 1960s, when there was little economic opportunity in most of the areas that we are discussing. People were leaving by the score or the hundred and there was absolutely no demand for crofts. Now, however, when it is demonstrably the case that young people in such localities wish to have their homes on crofts and to occupy them for productive purposes, it is to my mind utterly indefensible that a system that is supposed to be regulated in such a way as to maximise the active rural population contains anomalies such as the absentee tenant and multiple occupancy. It is no longer defensible for one person to occupy a series of crofts. If Parliament is looking to sustain the maximum rural population, as I believe that it is, there must be a will to tackle such anomalies. Doing that will be difficult and will not necessarily be popular—not least with the crofters—but that is why there are regulatory mechanisms and why there is legislation that operates in the wider interests of the community rather than necessarily in the interests of individuals.

12:00

Brian Wilson: I agree with a great deal of what Jim Hunter has said, but we are confronted with a bill that will not neutralise the situation until something like what has been described can be done—it will make the situation immeasurably worse, because the more that one licenses money to control the system, the more difficult it becomes to get back to what Jim Hunter suggests. If the Crofters Commission cannot regulate a system in which crofts have changed hands for a few thousand pounds on the basis of permanent improvements, how on earth will a system be regulated in which crofts are advertised in the *Exchange & Mart* and *The Sunday Times* and in which bare crofts with no pretence of permanent improvements are sold for £100,000? How do we impose on that system the things that Jim Hunter has suggested? Such trade would have to be stopped rather than licensed before the system could be modernised.

Derek Flynn: I have difficulty with the issue of valuation. There is conflict between people's general rights under the law and trying to regulate an unusual system of tenure. The bill allows for the market value of a croft to be identified for succession purposes. Since I have been dealing with crofts and their purchase, they have, whether purchased or tenanted, been given a market value in Scots law. Under the law of succession, many people might be entitled to inherit the estate of a deceased person. If a crofter dies, their tenancy is valued at the market value. The Crofters

Commission may resist seeing a market value, but the Inland Revenue has not ceased to see that value and will maximise the value of the tenancy for inheritance tax purposes. I am a lawyer who deals with Scots law and such things are not unusual to me. People are entitled to maximise the value of their assets.

That directly contradicts what Brian Wilson has said about regulating that value and somehow finding an unreal value for the asset when it changes hands at assignation, for example. The Crofters Commission has asked assignors—outgoing crofters—what payments they were receiving from the proposed assignee, which were put into application forms to go before the commission. It became normal to advise assignors that the chances were that the Crofters Commission would refuse the assignation if a high price was put in. The market then went underground, payments went under the table and people, having assigned their crofts, were left not knowing whether they would be paid for their asset. I cannot subscribe to such a system and have complained about it.

The faculty of solicitors of the Highlands held a seminar to which the Crofters Commission, the district valuer and SEERAD were invited. We discussed the financial value of crofts. It seemed to be inescapable that where there is demand, people will pay money to get the assignation of a croft, and that imposing a false value was unacceptable to the district valuer and the Inland Revenue. That is the situation that has applied during my working lifetime, since 1975. Someone else will come along and apply a market value even if the person wants to undervalue their asset. The other person will presume that the land that is to be sold will get planning permission for a house and that it will be valued accordingly. That sort of presumption goes through the district valuer's mind when he puts a value on property. That is inescapable.

How can an outgoing crofter be advised when he says that he wants to maximise the value of his asset? How can that crofter be controlled in wanting to get the best for what he has? Must he be made into some sort of lesser citizen? If so, let us spell that out. Let us read about it, and let us take the matter to the Scottish Land Court to find out what it means.

Mr Brocklebank: I have two questions, the first of which is for Derek Flynn. I hope that Brian Wilson and Jim Hunter can answer the second.

Mr Flynn states in his submission:

“the law relating to crofters and their holdings comes with considerable historical and emotional baggage. It seems to me that rights in crofts were originally bestowed by historical chance.”

I suppose that it could be argued that landlords originally obtained their land by luck or historical chance, too. We are where we are in that respect.

With reference to your earlier point about paying a landlord 15 times the annual rental to buy a croft, you are perhaps talking about 15 times £100, or several hundred pounds in any event. Five years later, the land might be sold for £100,000 in *Exchange & Mart*, as I think Brian Wilson suggested. What is actually being bought? Is it the croft, or is it the landlordship of the croft? That is the fundamental question that we are trying to get at.

Derek Flynn: Some crofters and their forebears have had security of tenure for 130 years now. The landlord who has, by chance, purchased the land that they are sitting on receives a very small rent from them. As far as removing the landlord from the scheme of things is concerned—I think that that is laudable in some cases and sometimes necessary—the 1976 act provided a method whereby the rent was simply multiplied and the landlord was not financially hit by losing the annual rent.

In many ways, a landlord of a croft is an anachronism. I had thought that we were moving towards the disappearance of landlords. In certain areas, however, the desire to remain a tenant overcomes the silliness of the position whereby people own land over which they have few or no rights and for which they receive little or no benefit. As I explained, people have little or no knowledge of who their tenants are and they do not care terribly much about what their tenants do. In many cases, the landlord's position seems to be weak. There are local landlords, who are individuals or companies who know their tenants and who might be valuable to the community.

The development that I have seen involves communities becoming their own landlords, which I view as a positive step. If the decision-making process that is available to estate owners is moved to the community itself, I see that as valuable. Many people, rather than becoming individual landowners, would rather that their communities became the landowners. That movement is now well under way.

Mr Brocklebank: I am not sure that you have answered my question yet. I still do not know what is actually being bought and sold. Is it the total right for people on the croft to buy and sell as they wish in an open market, or is it about buying the landlordship? What are people buying?

Derek Flynn: There are two participants. If they are buying anything they are buying the landlord's interest. Some crofters have chosen to move the landlord's interest. Instead of taking it on board themselves, they might pass it to members of their

family by way of a family trust, so that the tenancy is not affected but the landlord is removed. In some cases the landlord is not a pleasant fellow, so losing the right of purchase would be a great loss to certain tenants.

Mr Brocklebank: I ask Brian Wilson and Jim Hunter to comment on the matter, which seems to me to be one of the fundamental flaws in the bill.

Despite Shane Rankin's comments, it appears to me that Ross Finnie and Rhona Brankin have different views on what the bill is supposed to achieve. Rhona Brankin stated in her letter of 15 July to the *West Highland Free Press* that the bill offers no new freedoms in relation to the buying or selling of crofts, but a week later Ross Finnie told BBC Scotland that the bill would allow individuals to cash in on their assets. What is the bill trying to achieve?

Brian Wilson: An interesting divergence is opening up.

As I understand it, Ross Finnie's view is the one that Derek Flynn is expressing, which is that nothing should constrain the right of a crofter to dispose of an asset. That sounds to me like a reference to a free-market system, which patently crofting is not. The read-across must be to the issue of veto: crofters have always understood that they could not sell to the highest bidder regardless of their suitability. That is what the Crofters Commission is supposed to regulate. That is the constraint.

It may be that other constraints, such as the ones that Jim Hunter suggests, should be built in to skew the situation further in favour of local people and social concerns. There is not a free market in crofts; the market is regulated. The ethos that Ross Finnie expressed is that of a free market. Another supporter of the bill told crofting tenants that they should regard the crofts as pension plans. That is fine, but it would be a one-off payment. Once the croft and the tenancy were sold in a free market that would be it—they would effectively be out of the system.

The straightforward answer to Ted Brocklebank's question is that people are buying a landlord's rights over the croft. We have been through that scenario before.

Another point to which I took exception in Shane Rankin's comments was his presentation of the bill as a seamless continuation of the land reform programme that was put forward in 1999. I have an interest in how that land reform programme was formulated, and I assure the committee that a free market in croft tenancies did not enter the heads of those of us who, over a very long period, advocated land reform.

Derek Flyn mentioned community land ownership. Everybody in the Parliament should be proud of having finished the job on the crofting community right to buy, which was by far the most radical part of the land reform programme. If the committee asks any of the community-owned estates—as it will do when it goes to the islands—what they think of the bill, they will ask what the point was of them becoming community landlords if the rug is to be pulled out from under their feet by the creation of a free market in croft tenancies. They are buying as crofting communities, but all the strength, homogeneity and potential that that implies will be destroyed if the system of crofting tenure that underpins the community right to buy is destroyed. That was the basis of the Parliament legislating separately for that unique right.

Mr Brocklebank: Would Jim Hunter like to comment?

Professor Hunter: I will not add to Brian Wilson's comments except to say that it is striking that as far as I can see there is little integration between the proposals in the bill and the situation that has been created by community ownership. That is very strange. There seems to me to be a major distinction—in logic, if not in law—between the situation that will be created by the bill and the current situation. After all, in principle, crofting law and crofting status exist in order to defend the crofting tenant from the landlord, as was said earlier. Only if paternalism were taken to its extreme and ultimate lengths could the argument be made that Parliament must legislate to protect crofters not from landlords but from themselves. I would not make that argument, although some people might.

If crofting tenants are collectively to become the landlord, there ought somewhere in a crofting reform bill that is to become law in the year 2006 or 2007 to be recognition of the fundamental changes that were introduced by another piece of recent legislation that the Scottish Parliament created. As far as I can see, the bill includes no recognition of those changes; all that land reform stuff might as well be in another universe. I find that very strange.

12:15

The Convener: Okay. Next on my list is Maureen Macmillan.

Maureen Macmillan: The discussion of these ideas is absolutely fascinating. I seek clarification on the balance that needs to be struck between flexibility and regulation. The excuse that the Crofters Commission gave for not regulating was the need to consider local circumstances. If I recollect correctly what he said, Derek Flyn spoke about the difference between crofting on the

Western Isles and the Black Isle, although he also said that the same regulations should apply to both places.

It is not difficult to envisage a power of veto being made over who is to get a croft. For example, given that we have a points system for social housing, something similar could be put in place for crofting. Would the same regulations apply in every locality? How much flexibility will be required in implementing the strict regulations that have been espoused? Surely difficulties could arise if the regulations were applied too rigidly.

Professor Hunter: A distinction needs to be made; although all this needs to be explored, it has not been done so far. Concerns about the growing failings of the present system, including the constraints that Derek Flyn and others mentioned, have been articulated strongly. Despite the concerns, nobody has systematically investigated how a mechanism of regulation could be created that would produce, or would help to produce, a much more desirable outcome than the situation that exists at present, which is why I suggested that somebody somewhere should be told to go off and do that. Whether the Crofters Commission is the ideal candidate to do so is a moot point, however. As we have heard, it holds very strong views on the subject. That said, there is a need to explore the issues—the committee may seek to do that to an extent over the next few weeks.

I accept all that Derek Flyn said on the property right that has been created in the tenancy and the value that is attached to that right, whether by the person who holds the tenancy, HM Revenue and Customs or whomever. Nevertheless, it is worth bearing in mind that the entire property right of the tenancy, if that is what it is, would exist by virtue of legislation—that is, by virtue of interference in the market.

If Ross Finnie instead of William Gladstone had been running the Liberal Party in 1886, I assume that he would have said, "We cannot have all this terrible interference in landlords' rights." He would have talked about the free market and all the rest of it. At that time, the notion that crofters should be given security of tenure would have been laughed out of court.

However, in its wisdom and with very beneficial effect—as we have all have been saying for a long time—Parliament agreed in 1886 to create the system of crofting tenure. That having been done, and the whole crofting system and individual tenancies having come into effect as a consequence, I cannot accept that we can say at this stage, "Oh well, we cannot do anything about controlling the market within crofting itself." To me, the two things just do not gel. If we are to have a free market in the land, why stop at allowing

crofters to sell their tenancies? Why not go all the way back to the original market, hand the whole lot back to the landlords, take away security of tenure and see what happens?

Mr Brocklebank: That would be a free market.

Professor Hunter: That would be a genuine free market. At the moment, we are being presented with the idea that, somehow, there will be a free market inside a legislative fence that was created in the past to fence out another free market. That seems to be an absurd proposition.

Nora Radcliffe: Before I come on to the question that I want to ask, I am trying to get my head around the question why someone who can pay £100,000 for a croft cannot be a crofter even if they live on the croft, behave like a crofter and do all the things that crofters are supposed to do. The £100,000 might have benefited somebody who had lived and worked on that croft all their life. Will you elaborate on that and enlighten us?

Brian Wilson: That is a good point. Of course, such a person can be a crofter. Under the present system, if somebody pays £100,000 for a crofting tenancy through negotiation with the outgoing tenant, and if they meet the rigorous regulatory concerns, it would be difficult to object to that. However, the reality is that the higher the price, the less likely it is that the successful assignee will come from a crofting background or have similar status, and the less likely they are to want their little bit of land on a lovely promontory overlooking the Minch for anything other than a house site.

Jim Hunter's suggestion could correct that—I am interested in Maureen Macmillan's idea for a parallel with the points system for social housing—and give precedence to people from a lower economic background. However, as things stand, Nora Radcliffe is right that if a person meets the tests, it is difficult to object. Maybe that is something else that should be considered. It is the reason why, in 1976, the Crofters Commission retreated so quickly on intervention in the owner-occupation market. In the real world, if somebody pays £100,000—or whatever the like figure was then—for a croft, it is much more difficult for a regulator to come in and say, "I'm going to stop this" than it is if the parties are relative economic equals. The way to pre-empt that situation is not to allow the market to develop, but such a market exists now. If the crofter who pays £100,000 meets the criteria, so be it.

Professor Hunter: As has been said, the fact that an individual is in a position to pay £100,000 for a croft does not invalidate that person as a potentially beneficial member of the crofting community. However, we all know that one of the downsides of what is otherwise the upside of Highland economic success in recent times has

been the huge inflation in property values. In the wider housing market, there is no mechanism to do anything about that, although there are all sorts of possibilities for creating social housing and the like. However, in crofting areas and communities, it is felt, rightly or wrongly, that the system's *raison d'être* and rationale is to help to sustain people and create positions within the community for individuals who would not have a hope in the free market.

It is always much easier to take a generalised view on the subject than it is to take a particular view, and I have absolutely no doubt that in many cases we can understand why an outgoing person should be allowed to maximise any financial benefit he can get.

Nevertheless, there is a wider feeling within the universal community that it is somehow the responsibility of the people who administer and run the crofting system to take account of wider issues; that is why the issue has come through so strongly to the committee during consultation on the bill. Those who are responsible should take account of the fact that the young chap working on a fish farm or whatever in the locality, who does not have a huge income and will not be able to go out and buy an existing house in the free housing market, might under a properly regulated crofting system get one chance to get hold of a crofting tenancy or a croft. He would then—in principle—have access to the housing assistance that would allow him to create a house on that croft.

It is worth bearing in mind that one of the huge strengths of crofting, backed up by the crofter housing grant and loan scheme, is that it has enabled many individuals and families, who would otherwise never have been able to get a home of their own, to do so. That is a huge social benefit that we might be in serious danger of losing if we cannot somehow find a way of taking the system and all that it has to offer into the 21st century in a way that will continue to secure the benefits that it has secured in the past. The committee and the Scottish Parliament have a huge responsibility to achieve that.

Irrespective of why crofting was created, it has been one of the runaway success stories of rural development, not just in Scottish or United Kingdom terms, but in European and world terms. It has delivered something that most other comparable localities do not have but would dearly like to have. It would be an awful failure of responsibility if the first Scottish Parliament in 300 years was to write off all that. We have a big responsibility to the wider community interest to progress the issue in a way that will secure the community's interest as opposed to the interests of the individual.

Nora Radcliffe: I will follow that up. Again, I am not going to ask the question that I had wanted to ask.

We are dealing with a man-made, legalistic and heavily regulated system of tenure. If the price at which the landlord's interest can be bought out is fixed at 15 times the rent, why cannot that calculation be transferred to any subsequent transfer of the tenure? The incoming person would be able to buy the outgoing person's interest for 15 times the annual rent. Would that be a feasible mechanism?

Brian Wilson: By that time, the incomer will have paid his £100,000 for the tenancy. What would the fee be 15 times of?

Nora Radcliffe: If the landlord's interest can be bought out for 15 times the annual rent, why should that not be the limit at which the outgoing person can sell their tenancy or right of assignation or whatever?

Brian Wilson: That is an interesting idea, but it would go very far in a direction other than that which is proposed in the bill.

Professor Hunter: It is also important to keep in mind something that Derek Flyn mentioned in a slightly different context. For better or worse, or for the right or wrong reasons, most croft houses are now separated from the crofting system, and they stand on land that their occupier owns. In law they are, in effect, like any other house. It is worth bearing that in mind when the plea is made that the house might be the tenant's pension fund. That is a very genuine point and I understand why an outgoing person would feel that he or she has a right to realise their asset to the maximum.

However, a distinction can be made. Even if a crofting house has not been decrofted in that way, it can be; there is an absolute right to do that. The major capital asset on a croft is the house. No one is proposing that we reintroduce a system that would do away with that. If the outgoing person's house is worth £100,000 or £200,000, he can readily realise its capital value.

What we are trying to stress is that that should not automatically translate across to the part of the holding that is still in crofting tenure—which becomes what is called a bare-land croft because it does not have a house on it—so that it sells for another £100,000 because it is just a glorified housing site. That is the real problem, which must be addressed. Currently, there is no proposal to do anything other than what we are doing, which is not very much.

12:30

Nora Radcliffe: Can I now come to the question that I wanted to ask?

The Convener: It must be brief because other members have questions.

Nora Radcliffe: I would like Professor Hunter to comment on the proposal to create new crofting tenures outwith the crofting counties. How will that play out?

Professor Hunter: It will be hugely beneficial. Understandably, we have tended to focus on the negatives—the problems and difficulties. However, the creation of new crofting tenures is, in my view, a huge departure for the better. It is highly improbable that a private landlord of the conventional type will suddenly create a plethora of crofts on his or her estate in order to get into the sort of situation that Derek Flyn described in which he or she would lose all control over the land.

Again, I come back to the need to view crofting matters in conjunction with the land reform legislation. If a 1,000 acre hill farm in the Borders, Perthshire, Aberdeenshire or wherever is for sale as a farming operation, it will unfortunately not be worth an awful lot because of the difficulties that farming is in. However, utilising the land reform legislation, a community organisation or a similar body could acquire such a farm and instead of there being one farm it would be possible to create, depending on the circumstances, 20, 30, 40, 50 or more crofts. There would be a huge benefit from that in terms of enabling people to set up home in rural areas. The purchasing body would have total jurisdiction over who became the first tenant of such holdings, if not over who became the subsequent tenants, so in the first instance it could be ensured that at least a proportion of the new holdings went to the sort of people about whom we have been talking—those who are currently excluded from the rural housing and property market.

It is striking to be able to emphasise today the positive features of crofting. For instance, if anyone goes to the south end of Skye, they will see a landscape in which there are lots of new homes and a visible air of prosperity. That is because Skye is now a comparatively prosperous place. However, if anyone drives through huge chunks of the Borders, Perthshire or comparable localities elsewhere in Scotland, they will never see a new house. That is the difference in rural development and rural potential between the crofting system and alternatives to it. We need to explore as actively as possible the real opportunity of taking the strengths of the crofting system—we have been talking about its weaknesses—and replicating them in other relatively run-down rural areas of Scotland.

Brian Wilson: Arran provides a good example of an issue with which I have been familiar for a long time. It is great to create crofts. All I say is that there has been an attempt to spin the

situation to say that somehow a great dynamic market would be created and that it does not matter that existing stocks of crofting tenancies are being sold off to the highest bidder because all the new crofts will be coming in. That is just not true. If it happened to a modest degree, that would be great, but if we created 100 crofts on Arran tomorrow and put them into the hands of local tenants, I can assure you that the property market in Arran would run wild and that the new crofts would be there for only about a fortnight because of massive demand. It would be wonderful to create 100 tenancies in Arran that could not be marketed in that way and that would therefore allow local people to stay on their own island, which many of them cannot do just now.

However, if we accompany the creation of new crofts with the creation of a free market, we might as well not bother creating the crofts in the first place. We do not have to go to the Borders for historical evidence. The great thing about crofting, as anyone who drives around the Highlands can see, is that where there were sufficient numbers of people in the 1880s, crofting tenure applied, which is why those places have populations to this day.

However, double jeopardy also applied. The places that were most effectively cleared did not fall under the crofting legislation, so places in the Highlands and Islands, such as Mull and Sutherland, have to this day vast expanses in which nobody lives. It would be great to reverse history, so that places in the Highlands and Islands that did not fall under crofting legislation were taken back first through community ownership and then through division into crofts with security of tenure. For the first time in many generations, people from those places would be able to stay and people with connections would be able to return. That is a great vision to take forward, but it is the antithesis of the creation of a free market in croft tenancies.

Nora Radcliffe: Can I flag up something else that I see happening?

The Convener: I ask you to be brief, because other folk wish to speak.

Nora Radcliffe: Individuals who have small landholdings under the Small Landholders (Scotland) Act 1911 could apply to come under crofting tenure. That would involve not communities, but isolated landholdings. How would that pan out?

The Convener: I ask for brief answers, because two or three members want to ask questions and we have still to hear from the third panel.

Brian Wilson: What Nora Radcliffe described was the genesis of the demand in Arran. The demand was not for a general extension of crofting tenure to the whole of Arran; it came from

people—you have them in the north-east, too—who have always talked of themselves as renting under the crofting acts. One of the first things that should happen under the bill is that people who think that they rent under the crofting acts should have the benefits of crofting tenure.

Mr Ruskell: Brian Wilson described an exciting vision of people working the fertile straths and not just the coastlines to which people were originally moved out. He said that crofting was not a collection of communities but a system of tenure. Is crofting the best system of tenure and ownership to deliver that vision of rural regeneration? I went to Norway last year, which has a fantastic repopulated, sustainable and economically active rural environment. Could introducing crofting into lowland areas outside the traditional crofting counties involve problems? The vision is fantastic, but is crofting the system of tenure that we need in highland Perthshire and other areas?

Brian Wilson: I will make a small correction: I said that crofting involves not a collection of individual holdings but a communal system. Perhaps that was a slip of the tongue on your part.

Mr Ruskell: Is it the right system outside the crofting counties?

Brian Wilson: I do not know. It is more important to defend what we have than to go off on tangents about crofting communities in the Borders—Jim Hunter probably has a slightly different view. We should not be diverted from the main purpose of retaining crofting where it has been successful in the past. By all means introduce a system; it is certainly possible to do that through other land reform instruments.

Mr Ruskell: That is the issue—we must work out how the bill joins up with the Land Reform (Scotland) Act 2003. We are struggling with that. Does Jim Hunter have a view?

Professor Hunter: I do not advocate replicating the system, for fairly obvious reasons in the light of this morning's discussion. About the last thing in creation that I would wish on the Borders, unless I wished the area harm, is a replication of what the crofting areas of the Highlands have, with its plethora of legalities and all the rest of it. I certainly do not advocate extending *holus bolus* the current system into other areas. I am trying to convey the idea that if all the legalities and administration are left to one side as far as possible, the socioeconomic benefits of crofting are what we want to capture in current circumstances. That would have been silly in the past, but is applicable today, given that public policy is to secure the population and economic diversity in rural areas. Crofting or a system like it has much to offer in that respect.

I accept Brian Wilson's point that this issue is different from that on which we have focused. However, if we are to create something that is analogous to crofting in other parts of Scotland, I would prefer that to be done under the aegis of the community ownership provisions of the Land Reform (Scotland) Act 2003.

I would prefer to create a situation in which the people who collectively created the venture continued to have total control over it and one did not necessarily create a set of individual rights to buy and sell within the structure. It would be put in place as a community venture and it would continue to be operated as a community venture. The legal and other structures that were put in place on day one would impose on everyone an obligation to keep it going in that way. The idea requires some thought, but I believe in principle that there is a real opportunity.

Mr Ruskell: Would the Land Reform (Scotland) Act 2003 need to be revised to bring that about or should we try to do that in the bill?

Professor Hunter: I might be wrong about this, but I have been told by several people lately that it is difficult for community groups outwith the Highlands and Islands to acquire land under the 2003 act. If that is the case, something needs to be looked at somewhere. One of the huge benefits of the 2003 act is that, although it rightly makes a distinction in respect of crofting communities, the wider provisions apply to the whole of Scotland. Under the act, any community anywhere in Scotland is entitled to seek to acquire land. If communities outwith the Highlands and Islands are finding it more difficult to do that, something needs to be done. The intention behind the 2003 act was that a community in Berwickshire or Aberdeenshire should have the same right to acquire land as a non-crofting community in Argyll or Inverness-shire.

The Convener: Eleanor, do you want to come in now or will you kick off with the next panel?

Eleanor Scott: I would like to ask my question now, because it refers to something that Derek Flynn says in his submission.

The Convener: Please keep it brief.

Eleanor Scott: Derek Flynn's submission states:

"The Bill allows communities to decide how they want crofting to evolve in their locality."

Do the other members of the panel agree with that? Also, how much autonomy should communities have in deciding how they want crofting to evolve in their locality? If the autonomy is to be finite, how and by whom should it be policed?

Derek Flynn: That is a difficult one. In the main, communities identify themselves. Some communities are strong and some are not. One of the difficulties is that, historically, land has been in estate ownership, but the crofters who live on an estate are often not in the same community. Two townships on the same estate might not want to buy the estate and become community landlords because of historical difficulties between the townships. It is best for the initial community landlord to be a township rather than a huge estate. I encourage that when I talk to crofting communities. I suggest that they first decide whether they would like to be their own landlord, then consider whether they would want the next township to be their landlord. Only in that way can they identify what their real community is.

There are crofters estates. For example, Melness Crofters Estate has many townships, each of which provides a member of the board. It operates well as a community landlord. The Stornoway Trust is run in a completely different way, but it too operates well, as far as I can see. Getting the crofters on estates to buy the estate lands is not the most obvious way to get communities to run themselves.

12:45

Brian Wilson: The most peripheral parts of the country, which some people would consider to be the crofting heartlands, have continued to suffer economic decline. Typically, half a dozen bureaucracies will be responsible for such areas—although none of them will be located there—and each will administer aspects of decline separately. We must try to bring together that work at a more local level. That was the thinking behind *iomairt aig an oir*, with which some members might be familiar, which was an attempt to focus on such areas and to bring together crofting and housing interests—which, as the convener said, are closely related—with economic development considerations.

If we broke down the crofting regions into areas of 300 or 400 people, it would not take a work of genius to ensure that those people had homes, access to land and jobs. That would not be impossible, but the least likely way to achieve that goal is the structure that we have ended up with, which involves remote agencies such as the Crofters Commission, the Scottish Executive Environment and Rural Affairs Department, local authorities, housing associations and local enterprise companies, none of which is focused on the particular needs of such fragile regions.

I hope that we can get past the present diversion and that crofting becomes an essential and integral part of how we make progress. My ambition is for every croft in every crofting

township to be used, with every croft having a house or—when appropriate—several houses on it. That is the way to restore the population in crofting areas, but if all the systems are administered separately we will end up with a dog's breakfast. In most crofting areas there is frustration, because people are living on crofts but not working them, and people who need crofts cannot get access to them. Overlaying that is rapid demographic movement and the fact that people who arrive in crofting areas become the strongest force because they have more money than the existing inhabitants.

Professor Hunter: Brian Wilson mentioned the remoteness of the administering regulatory agencies. I hope that the committee will think about the connection between the bill and the Executive's public sector job relocation strategy. About 50 or 60 very good jobs in the Crofters Commission that concern the administration of crofting should, in my view, be located in a crofting area—preferably one that is experiencing greater economic difficulty. Relocating those jobs from Inverness to a crofting area in a part of the Western Isles, such as Uist, would be a significant boost.

The Convener: I thank the members of our second panel. Given that we asked the first panel an extensive series of questions, we needed to match that with an extensive series of questions for the second panel. Members of the third panel must be quaking in their boots. I thank the witnesses for engaging with us and for being prepared to help us to explore the bill's complexities and what we might do. Committee members are all aware that consideration of the bill is a big responsibility, which we will attempt to discharge over the next few weeks.

We will have a brief suspension while the members of the third panel take their seats.

12:48

Meeting suspended.

12:51

On resuming—

The Convener: I welcome panel 3 to the meeting. We have Hughie Donaldson from the Scottish Crofting Foundation, Andy Robertson, the chief executive of NFU Scotland, and Ian Cairns, the area consultant for Lewis and Harris at the Scottish Agricultural College. Thank you for sitting patiently through the previous sessions. I think that you got a sense of what will happen next. Thank you all for giving us your written submissions in advance.

We have spent a lot of time this morning talking about ownership issues, what it is to be a crofter and what is in the bill. In this session we want to pick up on how the land is worked and the issues with which the bill should deal. You have all given us slightly different views on that in your submissions.

I invite Elaine Smith, who did not say anything in the previous session, to ask the first question.

Elaine Smith: Thank you, convener. I want to ask Hughie Donaldson a question that I put to the first panel. You say in your submission:

"the SCF submitted a response that contained 23 suggestions for improvement of the draft Bill—these have been largely ignored."

Can you tell us about that?

Hughie Donaldson (Scottish Crofting Foundation): Certainly. Have you seen our original submission to the Executive?

Elaine Smith: I do not have it at the moment, but I would like you to tell us about it.

Hughie Donaldson: I can leave you a copy of the submission—that is no problem.

Mr Rankin mentioned earlier that 11 of our suggestions were not specifically addressed, which leaves 12. Paragraph 7 of the bill's policy memorandum is headed "More sustainable crofting communities" but it tells us nothing about what will happen, so we do not feel that it provides an answer. Paragraph 13 refers to more local involvement and the use of common grazing, but again we feel that it does not provide answers.

Paragraph 15 refers to section 32 and the greater responsibility to administer the benefits of the bill. The Crofters Commission is shirking its responsibility to take on change and make it happen to enable crofting communities to develop. Paragraph 16 considers local policies, but I hope that I can come back to that issue because I do want to get involved in it at the moment.

Paragraph 26 refers to absenteeism in a policy context and to there being more—or at least not fewer—crofters, but there is no mention of how the bill will enforce regulation. Again, there is no answer. On paragraph 28, we are not sure whether current regulation allows the Crofters Commission to direct a tenancy for an owner-occupier—it probably does not. We have not had time to study the proper occupier document because it arrived only around midday yesterday. It is hoped that there will be some way to force the Crofters Commission to regulate owner-occupiers who are not proper occupiers.

Paragraph 34 relates to financial support and the Crofters Commission's will to further develop schemes. That is all very well, but it does not tell

us an awful lot about section 4, and it tells us nothing about how the Crofters Commission's role will fit with the wider development roles of other agencies, such as Highlands and Islands Enterprise and the local authorities.

Paragraphs 37 and 38 refer to the Land Reform (Scotland) Act 2003. We are particularly disappointed with what paragraph 38 says about testing interposed leases. The deputy minister assured us that he would test them in the Scottish Land Court, but it appears that that will not happen and that provisions will be inserted in the 2003 act at a later date. The process might take up to five years.

Paragraphs 41, 42 and 45 deal with other matters. Despite the 12 points that the Crofters Commission purportedly addressed and introduced to the bill, it looks as if the bill is an abrogation of the commission's duty to regulate. Soft language such as "will", "could", "may" and "if" is used. The text does not say what will happen and what the bill will change. We do not accept that the points have been significantly addressed.

Elaine Smith: Is your overall interpretation that the bill will open up crofting more to market forces?

Hughie Donaldson: Yes.

Elaine Smith: You also feel that the bill is incomplete, because the proper occupier provisions have been produced only now. You think that they should have been included at the beginning.

Hughie Donaldson: Those provisions should be part of the bill. Mr Rankin started by taking us back to January 1999, when the land reform legislation process started. He moved on to July 2002, when the crofting reform white paper was issued. From 2002 to March last year, nothing happened except supposed consultation of one form or another. From March to now—the past 12 months—we have had a helter-skelter ride of not only the bill, but the rural development regulation, the new rural development strategy and the plan to focus on the direction that crofting will take. Throughout all that, there has been no vision for what crofting will be after the bill. We have consistently asked for the social and economic benefits that crofting has delivered to be measured—to be quantified and qualified from 1886 to the present day. Nobody appears to be listening to that, certainly in the commission.

Elaine Smith: How do you feel about the existing power of veto, which has been discussed? I know that you have listened to all the evidence. Could the veto have been used better, or should it be used to deal only with the worst excesses, as has been said?

Hughie Donaldson: That is a bit like a bookmaker picking his own horse. What is the point in backing only cases that can be won? A policeman does not chase only guys who are on foot; he must also catch the guys who are on bicycles and in high-speed cars. We should not use something as and when we feel it is worth it; we should use it to benefit the system, rather than the individual.

Nora Radcliffe: What are panel members' opinions on the provisions to create new crofts? Where might they be used? I am particularly interested in how they will work out with the crofting counties. How might an area be defined? What is the difference between being a tenant under the existing smallholding regulations and falling under crofting tenure?

Andy Robertson (NFU Scotland): We commented that one or two issues need to be sorted out before we proceed with those provisions. Shane Rankin said that extending crofting has two obvious advantages, one of which is access to crofting grant schemes, but what happens to the funding will need to be sorted out. If crofting grant schemes are extended to a wider range of applicants but the funding is not increased, that will cause a problem.

Another issue is what the exact meaning of the provisions is, particularly in relation to the second main advantage, which is the right to buy. It is slightly strange if one reason for extending the crofting counties or crofting areas is simply to give people the right to buy, given what people have said about the disadvantages of the right to buy. A technical issue is associated with that, because the cost of buying is 15 times the annual rent, and most crofters pay a bare land rent. I am not sure what rent small landholders pay; we would need to check that. That is not to say that I cannot see some big advantages in extending the system of crofting tenure, but we need to be clear about the implications.

13:00

Ian Cairns (Scottish Agricultural College): If both parties want to create new crofts, there would be some advantages. An example that has been mentioned is an area in Strathdon where a lot of small producers wanted to get some of the rights that are afforded to crofters and the landlord was happy with that. In that example, there was a good case. However, I foresee a few pitfalls. We have some experience of creating new crofts, so it is not a new phenomenon. The Orbst estate in Skye was purchased by Highlands and Islands Enterprise with the idea of taking on what was previously a farm, dividing it up and making it available to crofters. The lesson to be learned from that is that there are quite a few difficulties in

trying to create a community. How does one go about doing that? That brings us back to some of the fundamental issues that the committee has discussed today. What is in the community's best interest? Should there be a points system? How does one match the person who is going to be part of the community to the delivery of objectives on behalf of the wider community? It is a complex area. We have to learn from previous examples. New crofts might not be a panacea that can be rolled out in all cases.

Hughie Donaldson: On new crofts, we have been working hard with a disparate group, with a lot of assistance from the Forestry Commission Scotland. We made contact with various community groups in Dumfries and Galloway. Access to the Forestry Commission estate under the national forest land scheme was facilitated by a change in legislation in 2004, I think. That was a positive step and it is moving the debate forward—not necessarily in terms of building new crofts, but in the growing realisation that there is the will to do so within the Forestry Commission. Obviously, local authorities and planning regulators have to be involved, but I am hopeful that we can start to deliver on some of that work fairly soon. It is happening slowly but there is much more to do. We hope that the Scottish Crofting Foundation will be an integral part of delivering that, given its experience from the past 120 years.

Mr Morrison: In response to Elaine Smith's questions, Hughie Donaldson reinforced the devastating evidence that we heard from the second panel. The evidence was on an issue that is mentioned in your submission, Mr Donaldson—the incompleteness of the proper occupier provisions in the bill. In terms of process, how do you think they have been handled? I think you said that you were presented with the detail on what proper occupier means only yesterday.

Hughie Donaldson: It came in an e-mail, so my ink cartridge is now a bit low.

Mr Morrison: How has the process been handled? Your organisation represents the vast majority of crofters.

Hughie Donaldson: As I understand it, there is a common misconception of what the Crofters Commission is. It was set up by the legislation to represent crofters and to protect them and their tenancies. However, that does not necessarily fit with what crofting is and what crofting communities want to happen. When the bill manager was asked for his input on the bill, he gave two or three sentences and the issue was passed on to the chief executive of the Crofters Commission. It is the Crofters Commission's bill, not the Executive's bill.

Mr Morrison: That is a fair comment.

Hughie Donaldson: I made some notes on the chief executive's comments on the consultation process. At some expense, I attended three of the public consultation meetings. The totality of what happened in the meetings should have been published as the output of the consultation. We feel that the summary of the responses was partial—it was fairly selective and self-seeking, in that it sought to build on what the bill was trying to do rather than represent what came out in the public meetings.

Mr Morrison: As Mr Donaldson has rightly highlighted, the bill manager was incapable of answering a straightforward question. I have nothing else to ask.

Rob Gibson: To allow us to get an idea of what crofting can do in the 21st century, can the bill's inadequacies be sorted out so that the Executive can help us to create a vision for crofting? It is Hughie Donaldson's evidence that the Executive did not listen to the views of the people who attended the public meetings. It is clear that it certainly did not take account of the submissions that were made by people around the country. I have a series of unanswered questions to ministers about what they were going to do with the opinions that they did not want to address. I am interested to find out whether any members of the panel have suggestions about how the bill could be improved.

The Convener: Perhaps Hughie Donaldson would like to start, because he has identified a few issues that he would like to be dealt with differently.

Hughie Donaldson: The SCF, which is a membership-led organisation, has struggled to represent every shade of crofter opinion held by our members, but one change that could be made would be to tie the consultation process for planning applications to statutory consultation. The Crofters Commission must be part of that process. Those of us who have worked in local development for some years know that without such a change, the idea that it is possible to deliver a local policy group is questionable.

The crofting community development scheme, which will end this year, has been fairly successful. Schemes that are based on the LEADER programme, for example, may or may not become part of the Executive's new development plan. The initiative at the edge—iomairt aig an oir—and bodies such as the LECs and the LEADER local action groups have helped to deliver the small-scale sustainable development that is beginning to take off in communities in the fragile areas that we are discussing, but their work has always been thwarted by planning legislation.

It is a bit of a red herring to suggest that the planning problems all relate to active crofts, when the main issue is that no responsibility is taken for finding out the status of unidentified land at the fringes of townships. I know of several big crofts that were created for soldiers who came back from the first world war and which have disappeared into the housing market because no one checked on their status. We have found and lodged croft numbers and have managed to get local authority planning officers to ask the Crofters Commission to give its opinion on the designation of that land, but it has not answered. There has been a dereliction of duty at the local level.

It would help if the bill was tied to the Planning etc (Scotland) Bill. I am not a lawyer, but my understanding is that primary legislation affects people directly. The Crofting Reform etc Bill will certainly do that, so it is primary legislation. Consultation should be necessary before planning permission is given because we know from experience that, as soon as planning permission is given, all bets are off.

Rob Gibson: I want to follow up that point with the other panel members. Professor Hunter said earlier that the viability of crofting communities is dependent on the health of the wider rural economy. Hughie Donaldson talked about the need for housing and the means to achieve sufficient housing. He said that the basis for house building is control of how croft land is used. Do those views tie in with those of the Scottish Agricultural College?

Ian Cairns: My experience is on the Isle of Lewis and the Isle of Harris, which have opportunities and problems that are probably unique, and my view is probably the opposite of an Inverness-based view. The strength of the local economy on Lewis and Harris is a critical factor. As members will know, crofting is a part-time activity and the crofter's alternative employment is critical. Crofting on the scale at which it operates on Lewis and Harris is more or less a loss-making activity. As was indicated earlier, that is particularly the case if there is only one crofter on a croft that is perhaps only 2 to 4 acres in size, with a share in common grazing. Losses are even more dramatic down at that end of the scale. Such crofters cannot get a viable economy of scale out of their business.

My view is that there must be local representation in crofting matters. Perhaps the bill could ensure that the local vision is transferred through to whatever version of the Crofters Commission there will be in the future. There is a wee bit of a precedent in this area. We have talked about trying to get all the agencies together to develop local priority setting that could inform future grants and investment. In accordance with

action 35 in the Scottish Executive's document "A Forward Strategy for Scottish Agriculture", a local panel was set up in the Western Isles to consider specific issues there and to try to prioritise objectives for the future of crofting. Obviously, it is difficult to do that, but the panel came up with six development goals covering all areas, including agricultural and housing areas, and suggested positive actions. That plan will be important in ensuring the new Crofters Commission's credibility with local communities. It must have the flexibility to ensure that whatever is implemented has local relevance. The Inverness area has a booming local economy, but the situation is the opposite on the Isle of Harris.

Rob Gibson: Is local, elected control of decisions important? Someone must make the groups of agencies work at the local level. The minister has said something about action 35, which is fine, but how do we turn that into a strategy that can be applied at the local level?

Ian Cairns: That is the important point. The communities must lead on the input. Action 35 worked because all the agencies, whether development agencies or producer groups, were represented. Obviously, the Scottish Crofting Foundation represented its membership, and that general representation informed the whole process. The people on Lewis and Harris with whom I have talked want some democratic involvement to be included in the make-up of the new body.

Andy Robertson: I would start from the principle that new legislation must add something beneficial. The point has been well made that we must consider whether we need new regulation or whether we should make better use of existing regulation. I will not repeat all that has been said, but we get a lot of feedback on this from our membership in crofting areas and I would add that crofters believe firmly in local community involvement in decision making. Many of our local membership believe that they, rather than somebody sitting some distance away, are best placed to make decisions. It is important that the first port of call for decision making is as local as possible. We should fall back on regulation from afar only if something cannot be resolved at a local level.

I have two further points. Hughie Donaldson rightly drew attention to the current rural development consultation. We said in our submission that we firmly believe—as the Executive does—that agriculture is central to rural development. Crofting provides a classic example of how an agriculturally based system—it is not an exclusively agricultural system, of course—can support rural development. If the Executive wants to achieve its aims and objectives as set out in the

rural development consultation, a regulatory system for crofting that keeps the system going without imposing unnecessary new burdens is needed. That is the real trick.

I agree with Ian Cairns. One croft for one crofter might be an absolute ideal, but I do not think that that principle can be applied across the board. People have said that different localities and different geographic regions have different priorities. Tiree provides an easy example. I do not think that the one croft, one crofter principle could possibly be applied there because it simply would not work. We would end up with many derelict crofts.

13:15

Maureen Macmillan: I want to pick up on what you said about agriculture being central to crofting. On the problem of absenteeism and crofts not being worked, we have received evidence to the effect that much absenteeism has been caused by people being unable to afford to croft as a result of not enough support for crofting. That takes us back to less favoured area payments and other issues. Is the support that is available an integral problem for crofting? The issue cannot be covered by the bill, but I have been taken by the thought that we need to do something about agricultural support for crofters as well as regulation.

Andy Robertson: There are several problems that people in agriculture—crofters, farmers and others—face, including prices, questions about current and future support systems and the burden of regulation. People say to us that those are the three problems that cause difficulties.

Obviously, LFA support is up for discussion at the moment. It is important that LFA support recognises what disadvantage actually is and that it puts a value on or cost against it. There should be a transparent system that genuinely reflects disadvantage. Such issues are currently being considered, which I am happy about.

Maureen Macmillan: Is a contributing factor to absenteeism the fact that people think that trying to do something agricultural is not worth while?

Andy Robertson: If agriculture is the core business but is not profitable and people are losing money hand over fist on the agricultural side, why would they hang around to do the other bits of work? There is something in that.

We have said that we are concerned about agricultural use not being deemed to be the principal use of crofts. There are several reasons for that concern, one of which is the belief that agriculture is central to rural development. Concern has also rightly been expressed to us that local people who want to be crofters are being

priced out of the market by people who are buying crofts for other reasons. We have heard a lot about the difficulties that are involved in defining the term “other purposeful use”. How can we define the right crofting tenant if agricultural use is not the principal use and agricultural activity is not used as the basis for that definition? We are keen to see agriculture remain central.

Maureen Macmillan: It has been said that agriculture would still form the main part of crofting. I recall that some land on the croft must be kept for agriculture.

Andy Robertson: You should correct me if I am wrong, but I think that it has been suggested that agriculture should no longer be the principal use. I think that I read that somewhere.

The Convener: We can check that. From the evidence that we have heard, a significant proportion of a croft must be retained in such a state that it can be used for agriculture, but other parts of the land could be put to different types of use, and there could be diversification. Perhaps we can return to that issue when we meet crofters and other organisations.

Andy Robertson: I stress that defining a suitable tenant and a proper crofter is easy in the context of agriculture. However, as Shane Rankin demonstrated, those terms are much less easy to define if one is talking about wider matters.

Eleanor Scott: I take it that when you talk about agriculture, you use the word in its widest sense, so it might include growing vegetables in a polytunnel, for example.

Andy Robertson: Yes.

Eleanor Scott: My next question is for Hughie Donaldson. Criticisms of the operation of the Crofters Commission have come from various quarters. However, you say in your submission that you dislike the proposed changes to the commission. How will the proposed changes make the situation worse for crofters?

Hughie Donaldson: The idea that we have in front of us a lucid and clear stairway to heaven is a fallacy. It is almost impossible to read the bill, let alone make sense of it. The short answer is that it is difficult to say what the effect will be. The glaring point that has emerged is about the appointment of the great and the good to decide what crofting is and will be; that must be decided by crofters locally.

Crofters are not frightened of change or of the future, although it could be rocky for quite a few years. Crofters wish to engage actively in that future. The Scottish Crofting Foundation welcomes the noises that the Scottish Executive has made about the future role and development of crofting. The foundation wants to be involved and to help to

deliver that for the country, as well as our members.

Eleanor Scott: In essence, you say that the Crofters Commission cannot do a proper job in the 21st century unless its board is elected.

Hughie Donaldson: Yes.

Eleanor Scott: That is clear enough.

Nora Radcliffe: I return to the idea of one crofter, one croft. Many crofts are too small to sustain even a part-time income. The bill provides for the division of crofts. Should it provide for amalgamating crofts to form larger units, if that were in the community's interests and would create more viable units than a variety of separate crofts?

Hughie Donaldson: The viability of crofting for agricultural production is minimal. A fact that is often overlooked is that, in pure basic numbers, crofts hold about 500,000 sheep and 70,000 cattle. If people want to ignore that as part of our national food production, that is fine—crofting can be wiped out as an agricultural system. However, it is the base for other industries in our national figures on food production. Crofting is part of that and of the breeding programme for replacement animals in the system. If somebody is to make a living purely from crofting, they must have decent or semi-decent land that is of a sufficient size to be viable. Why would people want to dismantle a viable business?

On the other hand, crofters have told the Scottish Crofting Foundation that, to create succession, they need subdivision of crofts. Family members and the required numbers of people cannot stay unless they have access to support to build a house and to start a small business. The feeling that we pick up is that people are prepared to take a lower-paid job and to rough it for a few years for the chance to start a family and build a home—although not in that order, I hope.

The amalgamation of crofts is a thorny issue. The bill mentions certain sizes and numbers. I think that it says that the maximum size for a croft should be 30 acres—or hectares. That seems reasonable and is a reduction from the current maximum, which I think is 50 acres, or four crofts on an area of up to that size. We see no harm in amalgamation, if it is required to make a viable agricultural business.

Ian Cairns: The issue comes back to local need and the variation throughout the crofting counties. Amalgamating two or three crofts on Lewis would give someone 8 or 10 acres to manage on their own. I prefer to think about crofting in the wider context and as not just about keeping sheep or cattle. The crofting landscape has been formed by crofting agriculture. However, if we consider

crofting as just a number of small farms, they seem even less viable than the big farms, which are not viable just now. The income streams from crofting and livestock enterprises are heavily dependent on subsidies. As has been said, support for each individual business needs to be targeted and effective.

Given the context that crofters manage the landscape and that tourists come to see and participate in that landscape and the culture, crofting has an important role, not just in producing store sheep and cattle—it underpins the whole economy. Crofting has the opportunity to set itself apart a wee bit. It is not pure agriculture or farming as we know it; it can deliver the socioeconomic benefits that come through land management contracts and it can attract support from the funding streams for the European priorities on sustaining communities and delivering the best management of habitats and the environment. Crofting can do all of that.

With a large number of small producers, there is room for innovation. Producer groups are strong in crofting areas, as are cattle and sheep stock clubs. People who have an interest in crofting and keeping animals do not have to take an active part in such clubs; they can be involved by investing in them. Crofters have many unique opportunities that are not available to farmers. If we are careful, crofting can pull in new funding that is aimed at supporting the viability of small enterprises. That funding is targeted not at farmers, but at delivering a community benefit, with agriculture as one possibility.

Nora Radcliffe: I was trying to get at the idea of a one croft, one crofter rule. De facto, in the crofting counties, people run four or five or even 10 or 11 crofts. Should we seek to regulate that?

Ian Cairns: I do not think that we can do that, because each area is different. On my croft, there are two house sites that were decrofted before we bought the croft—we have the third croft house and young families have the two other croft houses. They do not manage land but contribute to the local community on a different level—they live in the area, have kids in school, buy goods from local shops and generate local income. It is difficult to say that we should have a rule about one croft with one house on it and one family living there. We need scope for variation, which takes us back to local priority setting.

Andy Robertson: As Nora Radcliffe described, amalgamation already happens informally, but I am not sure that there is a need to formalise the matter. Individually, small crofts may not be viable, but as Hughie Donaldson's figures demonstrate, what crofters produce collectively is important. We should not underestimate the importance of the breeding hierarchy and breeding stock that come

out of crofting areas. I agree with Ian Cairns that we cannot really have a one-size-fits-all solution. In some areas, there is a heavy demand for crofts, so it would be wrong if one person collected a series of crofts and nobody else could get one. However, where there is not a heavy demand for crofts, to leave crofts vacant simply because of a one croft, one person rule would be daft, because we would lose production that could otherwise happen.

13:30

The Convener: I have two brief questions. I do not know what answers they will get me, but I will ask them. The first question is for Hughie Donaldson. You mention interposed leases in your submission and you said earlier that you do not want to wait five years. Could the matter be dealt with in the bill?

Hughie Donaldson: We were assured that it would be.

The Convener: What would be a suitable amendment to the bill?

Hughie Donaldson: We have a letter from the deputy minister that says that, in relation to the one test case that we could use—the Pairc estate buy-out—ministers would test the validity of the leases that were given to Scottish and Southern Energy via another instrument, which was set up to frustrate the land reform legislation. The letter states that Scottish ministers are minded to test the validity of those leases in the Scottish Land Court. However, it appears from paragraph 38 of the policy memorandum that that will not happen.

The Convener: The clerk has drawn my attention to part 6 of the bill, on the crofting community's right to buy and the real rights of tenants. The issue is about getting that tested.

Hughie Donaldson: Yes.

The Convener: The matter is incredibly technical. For my benefit, will you explain whether that can be tested before we get to stage 2 of the bill? What are the timing implications? The matter would have to be taken to the Scottish Land Court by the Executive.

Hughie Donaldson: Yes.

The Convener: It could not be taken by the Scottish Crofting Foundation.

Hughie Donaldson: It would have to be taken by a body of interest that has a direct relationship with the lease. That would be either the grazings committee or the body that was formed to buy out the estate. As of the end of last month the Scottish land fund no longer exists, so there is no way that a small community body could be funded to test the matter in court. We were assured that

ministers would do that, but it now appears that that will not happen.

The Convener: Thank you. I needed a bit of background to make sense of your previous comments.

My other question is about increased costs to crofters. What are your concerns about that? There are questions about what happens when maps are drafted and who is responsible for paying for that. Are you concerned about those issues, or are there other problems?

Hughie Donaldson: The delays to community buy-outs in crofting communities have been caused in part by problems with identifying what they are trying to buy. Thankfully, the Galson estate buy-out has moved forward to the next phase. We hope that it will go ahead and we wish those involved luck with the enterprise. However, those involved in the Pairc estate buy-out on Lewis are not even attempting to buy the inby ground because they cannot identify it and they do not know who owns it. There are perhaps 200 or 300 holdings. It is almost impossible to get one's head around that and to dedicate time and resources to do the work, yet that was the primary remit of the Crofters Commission from 1956. Its remit was to set up the register and record the information but, in 2006, that has still not been done. Under the bill, it looks as if responsibility for that will be given to individuals in particular areas.

The Convener: You said that the Scottish Crofting Foundation does not think that the bill is complete because of the issue with the "proper occupier" provisions. It is up to you if you want to put in a supplementary submission when you have had time to read the Executive's statement. When we go to Stornoway, local members of the Scottish Crofting Foundation will come to give us evidence, but there is nothing to prevent you from putting your concerns in writing before we draft our stage 1 report.

Hughie Donaldson: Technically, the consultation closes tomorrow.

The Convener: Yes, but I am saying that I am happy to take a later submission, given that the matter did not arise when we asked you to comment previously. It would be helpful to the committee if you were to come back to us on that point.

Hughie Donaldson: The first point in paragraph 7 of the Executive's explanatory paper is about the proper occupier—

The Convener: You said that you saw that paper for the first time only yesterday. It would be helpful to us if you were to give us your comments—do not leave it until the summer, but talk to the clerks after the meeting about how to

include those comments in the evidence that we will consider.

Rob Gibson: Section 35 of the bill deals with interposed leases and proposes to amend the Land Reform (Scotland) Act 2003. Am I correct?

The Convener: Yes.

Rob Gibson: That being so, there seems to be some misinterpretation of paragraph 38 of the policy memorandum to the bill. It talks about inserting new provisions into the 2003 act as if that would take place separately from the bill, but we are aware that amendments to address interposed leases will be made through the bill.

Hughie Donaldson: Are you sure?

Rob Gibson: I am looking at the policy memorandum now.

The Convener: I have just been speaking quietly with our clerks, who have pointed me to the right place. The bill is technical, and we do not have to bottom out all the detail today. I suggest that you look at that section again and talk to the clerks. There is an obvious issue about testing that matter in law, but we are looking at the bill as introduced. People should look at the evidence, and we shall certainly read the *Official Report* of the meeting to remind ourselves of what witnesses said. If we want to come back to people and ask further questions, we can do that. If we find the bill incredibly technical, people out there must find following all the evidence that we will hear incredibly technical.

Hughie Donaldson: I ask the committee another favour. Can we have an accurate list of the number of times in each of the past 10 years that the Crofters Commission has used its regulatory powers to force a decision? That would give us information about where regulation works and where it does not. If the committee could help to facilitate that before we reach stage 2, it would help us to draft our amendments.

The Convener: We can explore that.

I thank the witnesses on panel 3 for their evidence this morning and for their written submissions. We have got off to an excellent start. The evidence has illustrated that we are dealing with a complex subject and a complex bill. When we visit different crofting communities and meet the people there, I suspect that the diversity of crofting experiences will be re-emphasised.

The bill presents us with many challenges, but we have begun to address its principles and vision, the importance of crofting in the 21st century, the opportunity to modernise crofting and the importance of crofting to the social and economic vitality of our rural areas. There are many issues to consider over the next few weeks,

particularly in relation to other legislation, such as the Planning etc (Scotland) Bill and the Land Reform (Scotland) Act 2003. I can see that we will have our work cut out for us.

It is now 1.39 pm and we have just finished consideration of agenda item 1. Committee members know that we do not usually take this long to deal with the first item. I invite the witnesses to leave quietly and quickly.

Subordinate Legislation

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006 (SSI 2006/151)

Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006 (SSI 2006/156)

13:39

The Convener: Agenda item 2 is subordinate legislation. We have two instruments to consider under the negative procedure. The Subordinate Legislation Committee has considered both regulations and has commented on Scottish statutory instrument 2006/151, which deals with pesticides. Members have the relevant extract of that committee's 15th report.

I will make two brief comments. Having read the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006, I am no further ahead in understanding what the changes mean; I would need an explanation really to understand them. I will not delay our approval of the regulations, but they are not transparent because one would have to be a pesticides expert to make any sense of them.

I draw members' attention to the purpose of the Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006, which deal with imports of feathers. We have had a letter from the minister providing an update on avian flu, which is relevant. We have, over the past few weeks, dealt with a raft of statutory instruments that have been introduced to deal with avian flu, and we have had lengthy discussions about it during our consideration of the Animal Health and Welfare (Scotland) Bill. I think that we will come back to the subject, but the regulations are a welcome step towards gearing people up to prevent avian flu from coming into Scotland.

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

Members indicated agreement.

Work Programme

13:41

The Convener: Agenda item 3 is consideration of our work programme. Committee members have a paper from me that outlines our existing work commitments and covers some of the issues that we need to consider between now and the end of June. I know that members have comments on some issues. I will go through the matters on which I think the committee is agreed and then come back to the one or two on which we need a little bit more discussion.

On the budget, we have no stage 1 scrutiny in the spring, because this is not a spending review year. Are members happy to consider at a future meeting options for the autumn budget scrutiny? We will need to follow up a number of issues.

Members indicated agreement.

The Convener: Petition PE799 from the Community of Arran Seabed Trust on proposals for marine protection in Lamlash bay has been referred to the committee. Are colleagues happy to consider it later this term once our consideration of the Crofting Reform etc Bill is complete, and perhaps to consider it under one of the items that I will suggest on marine national parks?

Members indicated agreement.

The Convener: Do members wish to follow our established practice and take oral evidence from the minister in June on the forthcoming Finnish presidency of the European Union? We might get an update at that point on avian flu. It will have been a few months since we last heard from him.

Members indicated agreement.

The Convener: We must consider what follow-up work we want to do on some of the inquiries that we have completed. On the climate change inquiry, we now have the Executive's published climate change programme. It is a question of coming back to the issue and reflecting on where we might want to take it next. Rob Gibson and Mark Ruskell would like us to consider energy further. I suggest that they talk to me and the clerks and that we bring back to the committee a suggestion about how we might pursue that matter over the next few months.

Mr Ruskell: I am a little bit concerned, because a majority on the committee previously expressed an interest in tackling Scotland's energy mix and, in particular, how renewables and energy efficiency sit alongside conventional generation. We flagged up some of the reports that are being prepared outside the Parliament that we wanted to look at. I would be concerned if we were to punt

this vital matter into the long grass. We need to go beyond the soundbite politics of the chamber and do some work in the committee on this difficult issue. I would like us to keep it on the agenda and consider how we can continue to work on it, perhaps with the Enterprise and Culture Committee.

The Convener: That is my recommendation. I have just said that we should come back to the matter, but I would like some input from members on the shape of that consideration. We do not have time to discuss that this afternoon—it is now nearly quarter to 2—which is why I am recommending that we bring it back to the committee.

Mr Ruskell: I simply want to record my concerns in the *Official Report*. It is important that we do that.

The Convener: We will bring the issue back to the committee.

On our previous inquiries on development in accessible rural areas and biomass, having checked out the availability of chamber debate slots I understand that bids have already been made for the slots in the run up to the summer recess, but we have the opportunity to put in a bid for the autumn.

13:45

Rob Gibson: Yes please.

The Convener: I would have thought that we would want to take the biomass issue to the chamber.

Rob Gibson: We should bid on both issues.

The Convener: There is a tactical issue about how many bids we can make that will be successful. We could bid for debates on both issues but the committee would have to express a preference.

Mr Ruskell: What about bidding for a debate on the food supply chain inquiry?

The Convener: We have to complete the inquiry first.

Mr Ruskell: Do we have to decide on a particular topic at this point?

The Convener: No.

My next point is an update on the food supply chain inquiry. We are awaiting responses from the Office of Fair Trading and the United Kingdom Minister for Competition and Consumer Affairs. We expect to receive those responses by mid May. I suggest that we come back to that inquiry once we have finished taking evidence on the Crofting Reform etc Bill and once we have

received the responses that I mentioned. I am suggesting that partly because the organisations that gave evidence to the committee are wondering what has happened to the inquiry and because there is also very strong media interest, which is excellent. Are colleagues happy to return to the inquiry once we have received those responses and have dealt with the Crofting Reform etc Bill responses?

Rob Gibson: Do you think that that will happen by June?

The Convener: Yes; we are quite confident that it will happen by then.

Rob Gibson: That will be very useful.

The Convener: Mark Brough said that bids have already been made for the pre-summer debate slots, so we should wait to discuss the slots that we might bid for until just before the summer recess.

I have made some lengthy observations in my paper about work on sustainable development. We reported on that more than a year ago; it led to our climate change inquiry, which tested how the Executive is dealing with cross-cutting issues on sustainable development. I would like to bring back a more detailed options paper so that we can consider how we want to proceed on sustainable development.

The main area that seems to be absent from our work thus far is consideration of how the Parliament deals with sustainable development. There are issues around what the Scottish Parliament corporate body and committees are doing on sustainable development. That could be a legacy issue that goes from this committee to the next session of the Scottish Parliament. It needs a bit of work and thought. If colleagues are interested in following up the issue, we could come back to it at a future committee meeting.

Members indicated agreement.

The Convener: We previously decided in principle to take evidence from the minister on the Water Environment and Water Services (Scotland) Act 2003 annual report. A copy of that report was published at the end of March and we have dealt with several statutory instruments relating to the water environment. I recommend that we take evidence on the annual report after we have dealt with the Crofting Reform etc Bill. I suggest that we seek evidence, at least in writing, from other interested parties to touch base with the different stakeholders involved and broaden out the debate. Rather than being lobbied on the day before we have that discussion, we could give people a bit more space so that they can make more considered representations that we can examine and then test with the minister. Are members happy with that suggestion?

Members indicated agreement.

The Convener: I ask colleagues to suggest stakeholders that we might contact. The clerks will prepare a paper on that.

I mentioned the marine national park a few minutes ago. Colleagues will note that Scottish Natural Heritage has prepared an options paper, which the minister has put out for consultation. It might be interesting for SNH to give the committee a presentation on the options before the summer recess. The issue is kicking up a storm in different parts of the country and it would be useful for the committee to consider it.

Nora Radcliffe: Could we do that outwith Edinburgh in an area that will have a direct interest? Would it be possible to combine it with consideration of the petition about the west coast that we are dealing with?

The Convener: We could do that, but we would have to make it absolutely clear that going to a particular area does not mean that we are making any kind of statement about whether the area is a winner or a loser. Perhaps we ought to come back to that issue.

It has been suggested that the petition on Lamlash would be an interesting model of how to deal with differing local interests and the kind of structures that would be appropriate. I ask the clerks to think about that and to come back to the committee with some options. I just wanted to add the caveat that our going to a specific area does not mean that we are saying that that area should be a national park.

Nora Radcliffe: It would not be significant.

The Convener: Exactly. It is important to have that in the *Official Report*. Of course, some people might want to bid to have the committee go to their area; who knows?

Rob Gibson: We have not been to Arran.

The Convener: We have not, but it has been suggested.

Finally, members are invited to consider whether to seek approval to hold an away day this year. I can tell from the body language and the yeses that I can hear that members are interested in that. There is an issue about our work planning. At the start of my report, I highlight the amount of primary legislation that we have to deal with. We have to complete consideration of the Animal Health and Welfare (Scotland) Bill and we have to take the Crofting Reform etc Bill and the proposed aquaculture and inshore fisheries bill through the process. We then have the Environmental Levy on Plastic Bags (Scotland) Bill to consider. There is a lot of primary legislation to deal with, but it would be worth having an away day at which we can

consider what else we can deal with during the next year. Once we have completed our current inquiries, there should be opportunities for filling up our slots through the year, but it will take a bit of discipline.

Elaine Smith: Could we tie the away day to the Lamlash petition and the national park issue?

The Convener: There would be a chance of doing that. We would have to make a bid to the Conveners Group for money and we would have to ensure that everything was well worked out and could be justified.

Elaine Smith: We could justify the suggestion by saying that we were using the time to do everything at once rather than having two different days away.

The Convener: I can see that colleagues are very tempted by that idea. I will have the clerks put together a paper and come back to the committee with it before the end of term.

We must also begin to think about our legacy paper and discuss what we have learnt during the past few years that we want to pass on in 2007. Is that agreed?

Members indicated agreement.

The Convener: Okay colleagues; thank you. All that will go into the *Official Report* for external organisations and members of the public who might be interested.

I remind members that our next meeting—the second day of evidence on the Crofting Reform etc Bill—will be on Monday 24 April in Stornoway. Papers will be hand delivered to members' parliamentary offices later today rather than being posted out. Thank you for your patience, colleagues, and your stamina.

Meeting closed at 13:52.

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