

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Monday 24 April 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE 13th 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 GAVE EVIDENCE:

Morris Black (Paic Trust)

Simon Fraser (Anderson MacArthur and Co)

Kevin Kennedy

Angus Lamont (Hebridean Housing Partnership)

Donnie Macaulay (Western Isles Enterprise)

Iain Maciver (Stornoway Trust)

Murdo Mackay (Comhairle nan Eilean Siar)

Neil Macleod (Scottish Crofting Foundation)

Angus Macmillan (South Uist Community Company)

Duncan MacPherson (South Lewis and Harris Rural Community Housing Pilot Group)

Steve McCombe (Scottish Crofting Foundation)

John Price (Lewis Wind Power Ltd)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Comhairle nan Eilean Siar Chamber, Stornoway

Scottish Parliament

Environment and Rural Development Committee

Monday 24 April 2006

[THE CONVENER opened the meeting at 14:01]

Crofting Reform etc Bill: Stage 1

The Convener (Sarah Boyack): Good afternoon. I welcome committee members, witnesses, members of the public and representatives of the press to the 13th meeting in 2006 of the Environment and Rural Development Committee. I invite my colleague, Alasdair Morrison, to say a few brief words of welcome. People may wish to put their headphones on at this point.

Mr Alasdair Morrison (Western Isles) (Lab): Tha sinn an seo airson fiosrachadh a thional agus a thogail mu dheidhinn Bile Ath-leasachaidh na Croitearachd etc. Tha mi toilichte a ràdh gur e seo an dàrna coinneamh againn air a' bhile. Choinnich sinn an t-seachdain a chaidh ann an Dùn Èideann, far an cuala sinn fianais bho ghrunn eòlaichean—nam measg Brian MacUilleam agus Seumas Mac an t-Sealgair. Bha na fianaisean agus am fiosrachadh a fhuair sinn inntinneach dha-rìribh. Tha sinn a' dèanamh còig seiseanan mar seo air feadh na dùthcha: a dhà ann an Dùn Èideann agus trì dhiubh taobh a-muigh Dhùn Èideann. Tha mi toilichte gur ann sna h-Eileanan an Iar a tha sinn a' tòiseachadh leis a' chiad tè. Ann an dhà no trì sheachdainean, bidh sinn a' dol dhan Òban agus a dh'Inbhir Nis cuideachd.

Tha fios agaibh uile cò tha an làthair. Tha mi an dòchas gum bi sibh a' faireachdainn cofhurtail a' toirt fianais seachad. Bidh cothrom aig daoine a tha a' suidhe air na beingean-cùil a bhruidhinn rinn cuideachd mar bhuill agus mar dhaoine a tha a' riochdachadh diofar dhaoine gu poblach.

Following is the simultaneous interpretation:

We are here to gather information on the Crofting Reform etc Bill. This is our second evidence session. At the committee meeting in Edinburgh last week, we heard very interesting evidence from a number of experts, including Brian Wilson and James Hunter.

We will hold five meetings on the bill, two in Edinburgh and three outwith Edinburgh. The first to take place outwith Edinburgh is today's meeting in the Western Isles; then we will have a meeting in Oban and one in Inverness. I am happy that this meeting is in the Western Isles.

You all know who is present. I hope that the witnesses are feeling comfortable. People who are seated at the back of the room will have the opportunity to give evidence later in the meeting. Various public bodies are represented here today.

The Convener: Thank you.

We have apologies from Elaine Smith and Mark Ruskell, who are not with us. Eleanor Scott is attending as the Scottish Green Party substitute in place of Mark Ruskell.

I invite everyone to turn off their mobile phones, so that they do not interfere with proceedings or with our electronic equipment. We are delighted to be in Stornoway, from where we are now broadcasting live. I am assured by the broadcasting team that people who are listening to the Parliament channel can listen to our deliberations this afternoon. I hope that we have an interesting and productive meeting. We certainly got off to a cracking start last week, when committee members asked a lot of rigorous questions.

Our aim in considering the Crofting Reform etc Bill is to explore in more detail the experience of people in particular crofting areas and to hear views on what reforms of crofting are required to meet the challenges of the 21st century.

This afternoon's meeting will be in two parts. In the first part, we will hear from people who are involved in crofting or have other experiences that we think are important to discuss as part of our scrutiny of the bill. We will also hear from some of the main agencies that have local responsibility for matters such as housing and the promotion of economic development.

In the middle of the meeting we will have a break from the formal meeting and will ask members of the public for comments. We are keen to hear people's views and experiences. I will explain how that part of the meeting will work when we get to that point. I plan to reach that stage of the meeting by about half past 3.

Finally—as has been ably demonstrated—if people want to speak in Gaelic, we have a simultaneous translation system; therefore, I encourage people to speak in whichever language they feel most comfortable with. Everything that is said will appear in the *Official Report*, transcribed accurately—as ever—by our team of reporters, two of whom are sitting behind us. That is all that I need to say with regard to housekeeping.

We will have two panels of witnesses for the first part of our meeting. I welcome panel 1: Neil Macleod, the director of the Scottish Crofting Foundation, and Steve McCombe, the foundation's Harris area representative; Kevin Kennedy, a crofter from South Lochs; and Simon

Fraser, a solicitor with Anderson, MacArthur and Co in Stornoway. The committee has received written evidence from all the witnesses.

Mr Ted Brocklebank (Mid Scotland and Fife)

(Con): Good afternoon, gentlemen. It is good to be here. I will ask a general question first of all. One of the conundrums of the bill is that it seeks to strike a balance between the rights of crofters to realise value from their crofts and the future of crofting as a protected form of land tenure. Do you think that the bill achieves the right balance?

Simon Fraser (Anderson, MacArthur and Co):

The initial point that I make in my written submission is that if the new Crofters Commission is tasked with achieving the sustainable development of crofting, it will have difficulty in doing that through the discharge of its administrative functions. A lot of what will come before the commission—in increasing numbers, as a consequence of the bill—will be regulatory matters on which it will have to make decisions. If the commission is to achieve sustainable development through administrative decision making, it will have to be inventive and forward looking.

The answer to that conundrum might lie in the commission being particularly receptive to and aware of local requirements, as the requirements of one area will not be the requirements of another area. Somehow, the commission has to be aware of local conditions and needs, and it must find a way of bringing added benefit through the discharge of its administrative functions. That will be extremely difficult and a big challenge.

Mr Brocklebank: Perhaps Neil Macleod can give me his views on that. I read your submission with interest. You do not appear to believe that the commission will achieve the right balance through the bill as drafted.

Neil Macleod (Scottish Crofting Foundation):

No, I do not feel that the commission will get anywhere near that. Our big grouse all the way along is the lack of regulation. In its present form, the commission has the powers to regulate, but it is not exercising them. We cannot understand that. That is a huge deterrent to developments in crofting.

Mr Brocklebank: Kevin Kennedy is from Lemreway. I have read your submission. You are an example of the kind of young person that the bill seeks to get into crofting. I know the community of Lemreway, which is a very old community, and it is encouraging to see a young man coming into it. However, in your submission you suggest that you, too, believe that it is virtually impossible to make crofting work and that things are only going to get worse under the bill as drafted.

Kevin Kennedy: A lot of the older people are quite set in their ways. There are many things that I would like to do, but I would have to get everybody else involved in them and I am finding that a problem. People are set in their ways and I am just getting pegged back all the time.

Mr Brocklebank: If there is a virtual free market in croft tenures, will you be able to break into it?

Kevin Kennedy: I am lucky because I already have my crofts, but I cannot see myself expanding because of the price of crofts. There is an open market for crofts, and it is too expensive for the likes of me to break into it. People like me just cannot do it.

Maureen Macmillan (Highlands and Islands)

(Lab): I would like to get a bit more detail about the kind of things that are being held back.

Kevin Kennedy: Just different township things, which I mention in my written submission. We want to enter a rural stewardship scheme and a forestry scheme, but the township would have to borrow money and the people are just too set in their ways to do anything like that.

Rob Gibson (Highlands and Islands) (SNP):

I want to pursue the issue of crofters' feeling of ownership of the structure of the Crofters Commission. Under the bill, the commission will become more directive, although it wants to be more of a development body. Neil Macleod highlighted the fact that the commission's regulatory role is important. How should crofters be involved in that regulatory role, given the fact that we are now told that assessors will be appointed, not elected?

Neil Macleod: The assessors are already there, and over the years they have served crofters and the Crofters Commission admirably. However, over the past four years, the assessors' role has been diminished. Assessors were elected for areas of about 10 or 12 grazings committees, which means that they have the support and enjoy the confidence of the various grazings committees. The assessors are the eyes and ears of the Crofters Commission on the ground. I cannot, for the life of me, understand why their role has been diminished.

The talk at the moment is about local policies and local panels. I very much support having local policies. What people need in Harris is probably different from what we need in Lewis, and even different parts of Lewis have different needs. Our real fear—which I hear being echoed—is that the local panels will be asked to perform the regulatory role, and that just is not an option.

Steve McCombe (Scottish Crofting Foundation): I reinforce what Neil Macleod has said. Most crofters would probably cringe at the

suggestion that they want more regulation, but we would probably not have this reform bill if the Crofters Commission in its current form took some of its statutory responsibilities more seriously and undertook regulation; we would probably only be tinkering at the edges of some things that need to be changed. One problem—among many problems—with the Crofters Commission in its current form is that it is not representative; it is made up of people who are often not experts on crofting and who do not know what crofters need or want. A regulatory body to move crofting forward would have to be democratic or representative, at least.

Rob Gibson: Kevin Kennedy has suggested that townships need to have a clearer view of what they want, which people would have a good idea of if the township had to draw up a plan. If a plan had to be drawn up at the area level—say, for Harris or for parts of Lewis—elected crofters would be able to work on that in order to make it the policy of the Crofters Commission. Does the bill really help us to put that kind of power into people's hands, or is the commission just going to dictate policies from afar?

Neil Macleod: My fear is that it will dictate from afar. The commission has certainly been more democratic than it is at the moment. If the mix of people on the Crofters Commission was to change, we would want it to be made up of elected members who were chosen by crofters.

The Convener: Do Simon Fraser and Kevin Kennedy have any views on that?

14:15

Simon Fraser: A point was made earlier about the introduction of a free market in crofting tenancies, but there is already a free market in crofting tenancies—in my professional experience, there has been a free market for the 30 years in which I have been in my present role. The commission used to exercise a greater degree of control over the transfer of tenancies, but its grip on that seems to have slackened quite a bit with the passing of time.

If the bill remains more or less in its present shape, the commission will exercise greater control. I suggest that it should do that by seriously taking on board local concerns and needs. However, a difficulty with being too local is that people are generally happy to accept regulations in so far as they apply to others. For example, the absentee policy is generally popular; everyone thinks that it is a good idea as long as it applies to somebody else, but not if it applies to their Auntie Mary in Clydebank who one of these days might just come home and take over the croft again. Similarly, one can understand the situation of an

old boy who has no successors and could well do with funds, who might sell his croft and get a substantial amount of money for it. He would perhaps not want a more restrictive rule applied to him. The problem is that the rule is regarded as good as long as it is applied to somebody else. Accordingly, if the commission were to exercise greater control over those areas, it would have to ensure that it did so consistently.

Kevin Kennedy: I agree that the Crofters Commission should have more of a role in what happens, particularly with absenteeism and so on. However, if elected crofters were involved, they would have to take the flak. Many people who would be good at doing the job would probably not do it for that reason.

Steve McCombe: To go back to the local area policy, throughout the procedure that led up to the bill's introduction, I found that the local area policy idea was thrown at us every time we gave an example of something in the bill that would not work. The idea of local area policies is fine if there is a democratic, representative board that understands local needs. However, the idea was used as an excuse whenever someone pointed out an example in Lewis or Harris or in the Western Isles generally of where the bill would not address problems or would address them wrongly. The idea of local area policies is so vague as to be pointless. As far as I can see, it is just being used as an excuse.

Maureen Macmillan: I want to move on a bit to ask about how demand for crofts interacts with demand for housing, how the planning system fits into that and how people would ideally like the planning system to work as regards the building of houses on croft land. Whose views should be paramount—the local community's, the Crofters Commission's, the Scottish Land Court's or the local authority's? How do you envisage that the problem of crofts being sold on the open market as sites for houses will be dealt with?

Neil Macleod: The Crofters Commission should have to give prior consent before anything goes to the planning authority. We can all think of examples that show why that is a good idea. In my village, I know of at least a couple of instances in which crofts have been broken up and 10 houses have been built on the land, while young crofters in the village just cannot get a croft. What we did with common grazings could be a model for other villages. We made the poorer quality land available for housing, and a development of 40 or 50 houses is being built on such land. Anybody from the village or anyone who has a tenable link to the village can approach the grazings committee and ask for a site, and we can nearly always give them one. However, I must stress that the sites are not on the best quality land.

Simon Fraser: My experience is that most people who want to acquire a croft, whether through a family assignation or by purchase, do so to get a site for a house. Not everybody does that, but the greater majority do.

It is fortunate that the local planning authority in the Western Isles is not nearly as restrictive, shall we say, as planning authorities in other parts of the Highlands and Islands when it comes to rural housing. In fact, the major constraint is not planning but the availability of services, particularly water and drainage, and the cost of connection to electricity. Planning is not a big issue.

When it comes to the more difficult area of selling off house sites on crofts, there is a big problem, in that we are dealing with two sets of policies: the policies of the planning authority and the policies of the Crofters Commission. It would be sensible if the two bodies could get together and join up their policies.

Maureen Macmillan: Do you think that the bill should point to that?

Simon Fraser: I really do not know. There has been a lot of overregulation and overspecification in previous legislation. When things are enshrined in law, they are difficult to change. I suspect that it might be sufficient to issue guidance.

Maureen Macmillan: The necessary provisions could be made by regulation.

Mr Morrison: This is only our second evidence session. Last week in Edinburgh, prominent critics and commentators on matters crofting articulated clearly that the bill will facilitate, legitimise and license the existing free market in tenancies. If the current trend were to continue, or indeed were to be encouraged by statute, what does the witnesses' personal or professional experience tell them that that would mean for the communities in which they live?

Neil Macleod: It would be the death knell.

Steve McCombe: Local crofters are excluded from getting into the free market; that is beyond our means, given our income. If the current trend were to continue, it would be the death knell for communities. The crofts would become holiday homes; anyone who says otherwise is kidding you on.

Kevin Kennedy: The average age in the communities would increase; they are already old areas, and young people are not going to break into them.

Simon Fraser: The process will continue. You will find that crofts in the most attractive and scenic areas, such as west Uig and west and south Harris, will disappear first. You are less likely to see that happening in places where there

are stronger, more balanced local populations. Places that are perceived as less attractive to new money will probably resist the process the longest. The area in which I live—Callanish, on Lewis—is pretty attractive and I suspect that, over time, a lot of the crofts there will go. The greatest change will take place in the most remote and scenic areas, which is what is happening now.

The Convener: For how much money do crofts change hands these days? How do those prices compare with local house prices?

Simon Fraser: Local house prices have changed quite a lot over the past three years. House prices in the Western Isles tended to lag substantially behind those anywhere on the mainland, but there has been a readjustment and I think that they are now on a reasonable par with prices in other parts of the Highlands and Islands.

As far as the cost of crofts is concerned, one hears horror stories from time to time, from other places, of crofts costing £200,000 to £300,000. I cannot substantiate such claims, because I have not come across those examples. I have certainly heard of crofts not far from here selling for in excess of £40,000, which is a recent development.

The Convener: Thank you. I interrupted Alasdair Morrison. Do you have a supplementary question, Alasdair?

Mr Morrison: I have another two brief questions, the first of which is to the Scottish Crofting Foundation. We are hearing conflicting noises and mood music from your organisation and the Crofters Commission. Last Thursday morning—the day after our first evidence session—I listened to a commissioner talking on the radio. He claimed that the Crofters Commission was not going to listen to or involve itself in the political din, and that it would not listen to campaigning newspapers that were born of the issue of land ownership. The commission claims that it is truly reflecting the views of crofters and communities. On what is in the bill, who has got it right—the Scottish Crofting Foundation or the Crofters Commission?

Neil Macleod: As far as we are concerned, that was a blatant lie. We have made 23 submissions and, as far as I know, the commission has answered two of them, although it says that it has answered 11. Either way, that is not enough. Nevertheless, we want to remain in dialogue with the Crofters Commission on the bill.

Mr Morrison: What are your views on the argument that the two roles of the Crofters Commission are conflicting? As well as its regulatory role, it has a developmental role. Should the regulator be a pure regulator, or should it also have that developmental role?

Neil Macleod: The development role should be taken away from the Crofters Commission. Plenty of other bodies are able to fulfil that role and might, perhaps, make a better job of it.

Steve McCombe: I concur. A strong regulatory body should not confuse itself with development issues. Perhaps another body needs to take on the crofting remit more seriously, but I would not say that the Crofters Commission is the best body to deliver both aspects.

Simon Fraser: Given the relatively small numbers of crofts, individuals and activities, I doubt that Parliament would want to set up two separate bodies to administer them. I hope that the development role of the commission will temper its regulatory role and might encourage it to find a way of delivering the regulatory role in a way that is supportive of the development side of things.

Kevin Kennedy: The number of people might be small but there is great diversity within crofting. One township is completely different from the next. The scope for development is quite large.

Rob Gibson: If Highlands and Islands Enterprise and the Crofters Commission worked in partnership, could that be a way of combining the regulatory side with the development side in relation to the 17,000 crofters? The number of crofters is not that small.

Steve McCombe: Perhaps Highlands and Islands Enterprise could deliver in that regard, but why cannot the Scottish Executive's Environment and Rural Development Department continue to do so? It is the land use expert, so why should it not continue to handle the development side of crofting?

Rob Gibson: That is an extremely open question.

The Convener: We are trying to find a model that goes down to the local level. The discussion of different sorts of partnership work is interesting. That is why we are speaking to various agencies this afternoon rather than taking an approach that assumes that one agency is exclusively in charge.

Nora Radcliffe (Gordon) (LD): Last week, Brian Wilson—or it may have been Jim Hunter—said something about how there should be one crofter for one croft. However, I think that crofters sometimes work more than one croft in order to create a viable unit. Do our witnesses have any comments to make in that regard? The bill makes provision for subdividing crofts. Should there be provision for amalgamating crofts to create more viable units? I am not saying that we should do one thing or the other; I am merely asking for people's views.

Neil Macleod: Most of the crofts on this island and in the outer islands are extremely small and people cannot make a living from them. I have a 5 acre croft that does not wash its face, which means that I have to get seasonal lets. That works very well and is what most people do.

Nora Radcliffe: Do you sublet from another crofter?

Neil Macleod: Yes. I sublet another crofter's land and maintain it in good heart.

Nora Radcliffe: So that delivers on that crofter's obligation to work the land, which means that we have a system that works.

Neil Macleod: Most important, we are keeping the land in good heart.

Steve McCombe: Crofting is extremely varied. Some east coast crofts are 100 per cent arable and are almost farms, while some crofts in the islands can be made up of 6, 10 or 20 acres of land that most farmers would not look at. The de facto position is that most crofters who are making agricultural use of the land run multiple tenancies, whether officially or not. That is where local area policies would have to kick in, because it is also an issue elsewhere. I believe that Tiree has an horrendous reputation for a single crofter having more or less all the crofts. There has to be a limit, but here multiple tenancy is a fact for crofters who are still working.

14:30

Nora Radcliffe: I was rather surprised to discover that there is no definitive map-based register of boundaries. Do you have any comments on the desirability of achieving that, or on the difficulties that would be associated with doing so?

Steve McCombe: Since 1955, the Crofters Commission has had a statutory obligation to maintain an accurate register—something that it has never done. I do not think that, after 50 years of having that legislation, we should be obliged to sort out the problems that the Crofters Commission never sorted out. Moving to a map-based register from a decent existing register would have been a lot easier, but I do not think that crofters should pick up the expense involved. The issue needs to be dealt with seriously for many reasons, but if crofters have to pick up the bill, that will not happen.

Nora Radcliffe: Is the perception of the expense involved the reason why it has not happened to date?

Steve McCombe: There is an expense involved, yes. However, I am a director of the North Harris Trust, which is a community landlord,

and we really did not have accurate information about boundaries except for the information that other landlords decided to give us. To be honest, tenants always had to go to landlords to find out anything, and trying to move the situation on would have been difficult in the past. The whole tone of the process has changed, of course, but we did not have ready access to the information and we depended on the landlords' good will.

Nora Radcliffe: You did not want to rock the boat.

Steve McCombe: That was often our approach, yes. An unco-operative landlord could make whatever case or point they wanted to make about the boundary, because we could not dispute it.

Nora Radcliffe: So, you could be operating with an assumed boundary, and if you did not ask any questions you did not get unwelcome answers.

Steve McCombe: That is what happened.

Eleanor Scott (Highlands and Islands) (Green): I want to go back to an earlier question. We heard last week from the Scottish Crofting Foundation that it felt that the future of crofting must clearly remain primarily agricultural, and Steve McCombe's comment about SEERAD being a development organisation seemed to suggest that that is still the view. On the other hand, a lot of other things are now happening on crofts, and the bill aims to facilitate diversification on crofts. I suppose what I am asking is: what can you do on a croft that allows it still to be a croft, and are there limits? What sort of developments should you be doing on croft land, and how much of the work has to be agricultural?

Neil Macleod: Forestry activity certainly would not be crofting. Our crofts are probably too small for any wide-scale development, but we have common grazings, which could be used for development. In Skye, and even in Shetland, there are much bigger units than there are here, so that question would pertain more to them than to us.

Eleanor Scott: Do you see no role at all for forestry?

Neil Macleod: Aye, but a croft could not be completely given over to forestry.

Kevin Kennedy: Forestry could definitely have a role, but not on the best parts of the croft. There will obviously be areas where the crofter loses livestock, which costs them money, and it is fair enough to put forestry on that land.

Eleanor Scott: What about a step beyond that, such as mountain bike tracks?

The Convener: We spent a lot of time debating that last week, when we discussed acceptable forms of production for a croft, and the witnesses had different views. We would like to get your

views on what would be appropriate in the Western Isles. There is an issue about the uses to which the main bit of the croft and the rest of the croft might be put, but if you have a very small croft your options might be slightly more limited. Last week, we were trying to get to the heart of the question of what kinds of diversification people see as important and appropriate. There was discussion of the view that the land should always be capable of being put to some form of agricultural use, but that could involve environmental management, small-scale woodland planting or renewable energy uses. What are your views on what is appropriate in the Western Isles, and what framework should be in the bill to allow people to carry out activities that would be appropriate for crofting in the 21st century?

Neil Macleod: My personal view is that, whatever development takes place, the land should be capable of reverting to agricultural use if the need arises.

Steve McCombe: My view is that agricultural use alone is probably too narrow. Land use would be a better term, perhaps. Most small crofts in Harris are used primarily as homes and secondly for whatever business is run from them. If the person is a builder, they store their building materials on the croft. If they are a crofter, they graze their sheep on it. If they drive a lorry, they park their lorry on it. I would be loth to state in legislation that anything can be done on a croft. I do not know; the question is difficult.

Kevin Kennedy: There is plenty of scope for other uses, but crofts are so small that people cannot do things on a large scale. Bigger things would have to be done on a township scale rather than individually.

Simon Fraser: From an entirely personal perspective, I do not think that we should ever lose the link between agriculture and crofting. If we do that, we will lose the *raison d'être* of crofting. However, nowadays, nobody engages in the agricultural activity that was undertaken when the crofts were first laid out. Over and above the principle that we should not lose the link between agriculture and crofting, the range of ancillary activities in which people should be able to engage on crofts should not be restrictive. I sense that the committee has more or less got it right. Ultimately, whatever a crofter does should not be inimical to future agricultural—or, at least, environmentally beneficial—use of the croft.

The Convener: Do members have any final questions for the panel? We have all asked questions, but I will take a couple more, and the members who ask them will not get to ask extra questions of the next panel.

Mr Brocklebank: I am interested in a couple of points in Neil Macleod's submission, which states:

"This loosening of the regulatory regime has allowed grossly inflated prices for croft tenancies and freeholds and, paradoxically, an increase in absenteeism, dereliction and abandonment of crofts."

In other words, as the prices went up, more of the people who bought crofts stayed away. Was that a direct result of deregulation?

Neil Macleod: It probably was. Tackling absenteeism is not a cure-all. In fact, it can work in reverse. For example, someone who is pursued by the Crofters Commission as an absentee might hand the croft over to someone else. Let us say that somebody was enjoying a subtenancy and doing a reasonable job. As the subtenancy came to an end, it was left to the crofter to assume the land but he then sublet it to someone else and the scenario worsened, with what was reasonably good ground reverting to moorland. We have seen that happening and it is quite the worst scenario.

Mr Brocklebank: You oppose the bill's provision that neglect has to be reported to the landlord in the first instance. Who should it be reported to? Who should be involved instead of the landlord?

Neil Macleod: The regulator. It should certainly not be the landlord because that would give them an opportunity to sell on to another tenant.

Mr Brocklebank: So it is a matter for the Crofters Commission.

Neil Macleod: The Crofters Commission or the regulator, whoever that might be.

Maureen Macmillan: I am concerned about what Kevin Kennedy told us. He said that he tried to get different things to happen in his township but that nobody else was interested. Can anything be done to encourage people to do new things, to think new thoughts about crofting and to diversify?

Kevin Kennedy: It would be easier if things were done on a smaller scale and one did not have to get approval from the whole village. If one could do things with just a few people and still get the benefits that one would get by doing them as part of the village, that would be better.

Maureen Macmillan: Perhaps we need to look at the level at which decisions are made.

Kevin Kennedy: Yes.

Maureen Macmillan: What do the rest of the witnesses think about that?

Simon Fraser: A proactive grazings committee is required if crofters are to be able to engage in minority schemes within a township, which is what Kevin Kennedy is talking about. The best grazings committees now have semi-professional clerks,

who attend to all the paperwork and ensure that things are done but, in an instance such as Kevin Kennedy's, it is difficult to get beyond working on an individual basis if there is no grazings committee that is willing to take on the task of working up a scheme.

The Convener: Does Neil Macleod have a view on that?

Neil Macleod: I concur with what Simon Fraser said.

The Convener: Thank you very much. We have really managed to get beyond the headlines on some of the issues. Absenteeism came up a lot last week, but it is interesting to get your perspective that, although everybody wants it tackled, that must be done sensitively or else it could be counterproductive. We have been interested in getting a flavour of the issues that you think are critical to the bill. Thank you for being prepared to answer our questions and for giving us written evidence in advance. We will mull over the evidence afterwards.

We will now have a few minutes' suspension while we let the first panel of witnesses leave and the second arrive.

14:41

Meeting suspended.

14:43

On resuming—

The Convener: We move on to our second panel of witnesses. I welcome Iain Maciver, the factor for the Stornoway Trust; Morris Black, the company secretary of the Pairc Trust; and Angus Macmillan, chair of the South Uist community company. I thank them for their written submissions, which we have had a chance to consider, and I invite members to ask questions.

Rob Gibson: We are interested in interposed leases, particularly in relation to the Pairc Trust in the first instance. Do any of the witnesses share my concern that we have not established whether current unregistered leases that lairds have taken out are legal? It is of great concern that, as we begin consideration of the bill, we do not know the status of such leases.

The Convener: I had a brief phone call from the Deputy Minister for Environment and Rural Development last night and she intends to clarify the legal position. She has written to Don Macdonald of the Pairc Trust but I do not know whether the trust has received that letter yet. If it has not had the time to mull that over, we can always take supplementary evidence.

Rob Gibson: The committee certainly has not received the letter. It would be interesting to know what the witnesses think about the fact that, although the minister said that she would go to the Scottish Land Court to find out whether those leases are valid, she has not yet done so.

14:45

The Convener: I am operating on the basis that I have been told that she is now doing that. However, as committee members have not yet received anything in writing, we will let the question stand. Colleagues will have the opportunity to come back later if we need more information. I am not sure that we can bottom it out today.

Morris Black (Pairc Trust): The assumption is that the Crofting Reform etc Bill will have become law before the court decision is made. That does not really help the Pairc Trust with its application. We cannot proceed with our application until the question of the interposed lease is answered. Under the Land Reform (Scotland) Act 2003, in order for the Executive to approve our application we have to establish a public interest aspect. Within that, we have to consider the development of croft land and what we can potentially do with the estate as a whole. Obviously, the leases are restricting that.

Will we be able to keep our community for the year or two that it is indicated that the case will be in the Scottish Land Court? The community has been through the complexities of carrying out the provisions in the 2003 act; for the next stage of the application we need ministerial approval. At the moment, we cannot say where we are or where we can go with this. The Crofting Reform etc Bill, which addresses the right to purchase leases, does not answer the question either. How does purchasing leases out of land secure the public interest? Does it mean that the crofting community would have to purchase the leases before an application was made for consent? Those are the questions that we are trying to answer.

Rob Gibson: If there is a friendly arrangement—or even a hostile one—you have got to try to purchase the estate. It may be a silly question, but might you have to pay twice for the piece of land we are talking about?

Morris Black: What seems to be the case is that the 2003 act gives us one option to purchase the land. However, the development value of the land would be tied up in leases that were still owned by the landlord—or rather, not the landlord but what you would presume was the landlord.

Rob Gibson: So the bill needs specifically to clarify some of those points. What would clarify it for you?

Morris Black: For an application to gain consent to be approved by the Executive, the crofting community must satisfy the public interest provision of the 2003 act. For that to happen, I believe that all the landlord's rights must become transferable to the crofting community at the point of sale. That could be achieved through compensation to the landlord when we take over the land. The provision would have to address cases in which leases have secured potential development on the estate; if such leases came to fruition, compensation would be payable to the outgoing landlord.

Rob Gibson: Thank you for that useful answer, which we will want to think carefully about. Do the other two panel members have a view on the question of interposed leases?

Iain Maciver (Stornoway Trust): My primary concern is that some crofters believe that they will be directly affected by interposed leases. As I understand the position, no landlord can do anything to take away the rights of crofters. Therefore, the rights of individual crofters should not be affected whether or not there is an interposed lease.

Proposed developments should be able to be dealt with under the mechanisms that are already in place. Any asset that a landlord has sold off should not be taken into account in any negotiation over the value of the estate. Where that has happened on croft land that is to be developed, the matter would need to go to the Land Court for resumption. There are clear rules and regulations in place that dictate how land should be resumed. No resumption should take place if the lease involves a third party because the new community landowner would not benefit and resumption would not be in the community interest or the wider public interest if there was to be no benefit. Basically, that would stop the development going ahead. The landowner would need to decide whether to strip the land of value for a development that would never happen. I doubt that any landowner would be that stupid.

One concern in respect of leases is that the bill does not make it clear whether it applies only to interposed leases or to any leases. If it applies to any lease, I cannot see why any finance company or developer would want to take the risk of developing on croft land under a lease arrangement. The only way round that would be a direct purchase. However, that would go against the whole ethos of trying to maintain crofting and allowing crofters to retain an interest in development on land that they own.

Rob Gibson: I believe that the potential community company in South Uist has said that it does not expect that interposed leases will play a part in South Uist.

Angus Macmillan (South Uist Community Company): The buy-out is a friendly negotiation, so everything is 100 per cent on the table, including leases and subleases. Therefore, the issue of interposed leases has not hit us yet.

Maureen Macmillan: As with the previous panel, I want to ask about the interaction in the Western Isles between the need for housing and the need for crofting to be affordable to new entrants. We have discussed how that might be done through stricter regulation of the system but, ideally, the planning system should work in such a way that it gives the local authority an idea about where the crofting community wants new houses to be built. If we could work out where new houses should be built, might that relieve the pressure on crofts from people who really just want a house?

Angus Macmillan: As I said in my submission, crofting is changing and has changed rapidly over the past 20 or 30 years. We need to recognise that many people are looking for a house site rather than for a croft. If we recognised that, more people would be given the opportunity to live in the Highlands and Islands and crofting would benefit because more land would be made available for agricultural production and other activities that would be of economic benefit to the crofting community. We need to try to address those issues.

Every area is different—we have heard that time and again—but we see that in particular in the Uists. We have derelict houses with services going to them. It might be appropriate to take those houses out of crofting and make them available as private housing. Such houses are all over the islands. Rather than having clusters of local authority houses, we should first release what are in fact private houses that have amenities such as electricity and a water supply and to which roads go. That would benefit people who want to have houses and to live in the Highlands and Islands, and it would benefit the crofting community. South Uist may be different from other places, but we think that that is the way ahead.

Mr Morrison: How do you meet both demands? Do you let market forces rip through crofting unfettered or do you act as the Stornoway Trust and other publicly owned landowners do? It is hoped that your organisation will soon be in public hands, too.

Angus Macmillan: The basis must be the suggestions in the bill. Local plans are just part of that. Houses that can be made available should be identified; that would feed into a local authority's planning system.

Maureen Macmillan: That depends on a community's being willing to go along with how you want to proceed. Some communities might

want to maximise their profits and get as much money as they can for sites. Does progress depend on the community? What can we do to pin the system down in other communities, so that similar schemes can be run? There is a famous case of croft land in Taynuilt being sold for executive housing. How can we stop that?

Angus Macmillan: The aim is to meet the community interest. If we start with that and have regulation by the Crofters Commission with the crofting interest and the community interest in mind, the objectives will be feasible.

Maureen Macmillan: They follow on naturally.

Angus Macmillan: Yes.

Iain Maciver: The question has exercised the trust for some time. The demand for croft land to build on is huge. It is clear that we are at the mercy of the individual or the market at the moment. More often than not, we find that for young people in particular, having a croft is not enough. People might have a croft that does not have a house site, because of the problems with services that have been mentioned.

Considering how to address that requires more than looking at the bill. Planning must be examined, as must the function of the Land Court. Crofters are unclear about whether they should apply for decrofting or a resumption and whether, although the commission says yes, the Land Court will say no. For the way forward and to maximise our land asset to the best advantage of people who come in and people who are there—the crofting shareholders—we are crying out for local plans. The likes of policy panels could play a useful role when our crofting communities must decide whether to leave themselves exposed to the market or to plan for the housing needs not just of people who are there but of their families in years to come. Such planning is critical if we are to retain croft land.

Plenty of poor land on the outskirts of townships could be developed for people who want just a house site. If people want a croft, that is a different matter. The problem is that, because of the grant system, even crofters must decroft the minute that they build, to service their loan. Crofting is being eaten away. More often than not, a croft house is now built on the best part of the croft. In the olden days, the croft house was built on the poorest part of the croft, because the croft was a valuable resource. Now, the situation is the other way round. That must stop if crofting is to be a system that is of the same environmental quality that attracts much support for and interest in crofting at the moment.

Maureen Macmillan: That was useful.

15:00

Mr Morrison: I ask Iain Maciver, as the full-time factor of the Stornoway Trust, what his experience has been of the Crofters Commission as a regulator and what, in an ideal world, an estate such as his would look for from the commission.

Iain Maciver: It is important that the Crofters Commission continues to regulate. Where empowerment has been passed on to villages, it is fair to say that the people who are involved find that difficult, because they end up having to take decisions that are not to everybody's liking. An independent body such as the commission should come in to regulate in that situation. The community should decide what it wants and, once it has done that, an independent regulator such as the Crofters Commission should ensure that the plans are adhered to. The Scottish Land Court regulates in another sense and has the confidence and trust of the crofting community. However, to appoint panels of people who live locally to try to fulfil the regulatory function is a recipe for strife in the townships. The Crofters Commission should regulate from afar, although it should, of course, be accountable to the community. That function of the commission should be retained.

As a factor, I have a problem with balancing individuals' rights and interests against the wider community's rights and interests. At present, anyone who wants to challenge a decision, or who does not want to share anything that he or she has, has the right to buy. It is concerning that, under the bill, it will be possible to use the right to buy as an escape route to avoid regulation, too. Where there is a right to buy, it begins to break down communities. That is a blanket comment that perhaps does not apply to all crofting communities, because everywhere is different. However, particularly in Lewis and Harris, where people in crofting communities depend on one another, breaking up the communities into sets of owner-occupiers is not the way forward for crofting.

Mr Morrison: I have a question for Morris Black and Angus Macmillan. I hope that the organisations that they represent will soon have Iain Maciver-type characters—full-time factors on publicly owned estates.

Some senior commentators have said to us in evidence that the bill as drafted—which, incidentally, was done by the Crofters Commission, which is another absurdity, but that is a matter for another day and not for this panel—will let market forces rip through crofting communities. If the bill as constituted is passed, what would it mean for Angus Macmillan and Morris Black if, eventually, they become directors of publicly owned estates, as we all hope will happen?

Angus Macmillan: If the bill goes ahead as it is, it will fail and will not achieve what we are trying to achieve—there is no doubt about that. We will have failed in everything that we are trying to achieve through the Land Reform (Scotland) Act 2003 and other measures for the wider benefit.

Morris Black: I agree with Angus Macmillan. The bill will fail if it remains as it is. There are too many ifs and buts and too many different possible scenarios. The bill does not clearly identify exactly what will happen.

The Convener: What would you do to change the bill? If you do not like it, now is the time to say which sections or relationships between sections you do not like. Alternatively, is the issue about how the Crofters Commission works? If we get criticism that the bill will not do what is needed for crofting, we need to know what would make it work.

Angus Macmillan: In my submission, I say that an unregulated open market will not achieve what we are looking for. We need regulations along with the local plans. In addition to that, every tenant will have the obligation—as well as the fantastic rights that go with crofting—to take the responsibilities too. Those responsibilities are wide. They must be respected so that development plans that are taken on as part of a tenancy are carried out in addition to land management. Responsibilities go with the rights. Only if we get the balance right will problems be resolved.

The Convener: I saw the comment in your submission about the idea of a bond to deal with absenteeism. To achieve the vision that you have just articulated, are there provisions that you think should be added to the bill, or taken out of it?

Angus Macmillan: The bond can happen on a local basis, provided that the local plan is in place. It would tie people to the responsibilities that I referred to.

The Convener: You are talking about a crofting local plan, and not a land-use local plan from the council. Would every local crofter buy into a crofting local plan?

Angus Macmillan: It would start off with a local plan and then work up to a wider plan for the particular area.

Morris Black: Two issues seem to arise. As things stand, we have a decrofting process to go through for housing and so on. I do not see that system as not working at the moment; it is working at the moment. Our main concern with the free open market is that the affordable housing issue has not been addressed. Open market forces will overtake that issue.

The wage structure in the Western Isles means that local people cannot compete against the

market forces in housing. That is why we now have so many holiday homes; people are just buying up the houses for holiday lets. That is happening in a decrofting context. An actual croft always has its own croft house. It was traditionally not decrofted. However, the bill pushes the idea that decrofting must happen so that the house can be improved. There must be monetary security for the house.

Iain Maciver: At the moment, the clawback period is only five years. That is not a long time for someone to wait to cash in on an investment. I do not know the legal complexities, but if the clawback period were extended it might help a community landowner.

Another thing that is causing a lot of strife and ill-feeling is the fact that, when a tenancy changes, it is quite often on the back of a fantastic, imaginative and wonderful plan that, in the end, is not implemented—even though the person secured the tenancy on the strength of the plan. A whole host of excuses are used to explain why nothing has happened.

There could be a probationary period during which a local panel could consider the suitability of an individual, measured against others. If the person is suitable, they could be called to account after a five-year or a 10-year period. If he or she has not fulfilled their obligations, their tenancy would not be fulfilled—although, of course, they would have the right to buy the house site if they had developed a house on it.

Such a system might stop people spending an awful lot of money on something that they might never own unless they are intent on fulfilling their obligations. If they were intent on doing that, they would have nothing to fear.

Rob Gibson: Would it help if the Crofters Commission personnel were detailed to do that enforcement at the behest of an area committee?

Iain Maciver: There is no point in asking for plans if they are not going to be enforced because anything can be put on paper. We often hear about cases of deserving people not being able to compete with plans that are basically fairy tales.

Eleanor Scott: Some of what I was going to ask about has been touched on but I am going to ask my questions anyway.

I want to ask Angus Macmillan about the South Uist community company's submission, which was beautifully up-tempo; I really liked it. You were talking about the benefits that flow from a community company and the use that you intend to make of public money. In an area that is almost all croft land, how much decrofting will have to happen to allow for those developments or will they happen within the crofting context?

I also want to explore a bit more the possibility of a bond to make incoming tenants adhere to the plan that they proposed when they were awarded a tenancy.

Angus Macmillan: The main projects that we are proposing at this stage are as detailed. Not many of them would impinge on crofting, although 93 per cent of the estate is under crofting tenure. Most of the developments would be on land that is in hand, apart from the rural housing and, of course, common grazings. With community ownership, the revenues from estate management and sports would come back into the community. Sporting activity would take place on croft land, so there would have to be close ties between estate management and sports.

As anyone who has been to Uist will know, the reinstatement and upgrading of the drainage system is vital for agricultural production and for defence from the sea. Again, most of that is on common machair not the inby land. Renewable energy projects would more likely be on common grazing land.

Strategic land release would be for commercial private and public projects that would deliver economic development, as would, of course, the Lochboisdale port-of-entry scheme. The plan is for a mixture of all those ideas.

As I outlined, the rural housing would happen on a mix of common grazings and existing inby, with the crofters' permission.

The bond is a way of getting people to sign up to something that they can deliver. Whether they deliver on the development plans or the land management plans goes back to rights and responsibilities. If someone is not delivering what they have promised, they will lose their rights.

Eleanor Scott: That ties in with the provisional idea that we heard earlier.

I am interested to see that a wide variety of activities are perfectly compatible with crofting.

Mr Brocklebank: I would like to explore a little further with Mr Maciver the point about the clawback being after 10 years rather than five. Last week, a contributor said that while we might talk about a free market either coming into the system or already existing in the system, there is no real clarity about what someone is buying. Are they buying the croft outright, or are they buying the landlordship? I am interested to hear Mr Maciver's views on that.

15:15

Iain Maciver: My understanding is that the person is buying the croft outright. Since the abolition of feudal law, when someone gets the

title to the land, that is effectively what it means—they own the croft and can do with it anything that the planners will allow them to do. Not only are they buying it; they are buying it at 15 times the annual rent. The question is whether, for the benefit of the wider community, the value should be 15 times the annual rent.

Mr Brocklebank: The bill appears to propose that a free market should operate at the point of sale but that the market should be regulated at the point of purchase. Under the bill, someone could buy a croft for 15 times its annual rent—perhaps 15 times £1,500—and, five years later, they could sell it for £50,000 or £100,000.

Iain Maciver: If £1,500 was a fifteenth of the value rather than 15 times the value. However, the rent is not £1,500; it is closer to £50 for a Stornoway Trust croft. The average croft rent on the Stornoway Trust estate at the moment is about £18, and the tenant has the right to buy at 15 times the rent. We could have a rent review, but there would be a downside for people who want to croft. Should we start to increase Stornoway Trust rents to fall in line with the market? That is certainly not the way forward for crofting.

A crofter has the right to buy, but potentially that deprives the community of the full value or development value of the land. That might be acceptable from the individual's point of view, but if the person next door did it, they might find that unacceptable. You asked earlier about what can be done on croft land. A simple way of looking at it is that crofters do on their own land what they would not mind their neighbour doing on theirs. If they would not be happy with their neighbour doing something, they should not contemplate doing it themselves.

It comes down to plans. There are a host of different types of croft. Someone can now have a croft with apportionment that is quite remote from the village. A development on that type of croft would be totally different from a development in a linear, close-knit crofting settlement.

Mr Brocklebank: Let me make sure that I understand this. You are saying that it is not just the house that will be the crofter's by right to do with as they wish; the croft in its entirety, including the land—whether it is adjoining or distant from other crofts—will be theirs to do with as they like once they have paid £50 rent for this year. Then, five years hence, they will be able to sell the croft for £50,000—that will be possible under the bill as it is drafted.

Iain Maciver: It is not the bill that is at fault. At the moment, the crofter has a statutory right to buy the house and garden site or the croft, or any portion thereof, for 15 times the rent, unless the landlord can put forward a good argument for why

that should not happen—which is a difficult argument to make. They then become an owner-occupier, or the croft becomes vacant and has to be relet. Under the bill, the person has the right to sublet, but that would be a fixed-term sublet. We could not lease the land of a vacant croft because that would create a tenancy, but the crofter who is an owner-occupier or an absentee owner could sublet it, which would help him to avoid regulation. That sublet would not create a tenancy; it would create a fixed-term tenancy, which is not what crofting is either.

Mr Brocklebank: I am still groping towards an answer to the question that Sarah Boyack asked earlier. What would you like to see in the bill to prevent such land from going out of crofting?

Iain Maciver: That takes us back to the idea of a local plan that would show what land was important to the crofting stock and what land could be developed. It should make no difference whether the land is owned by an individual or a community: the commission should apply the same rules. Buying land with the ultimate intention of decrofting it should not be encouraged and should not be possible.

The Convener: Nora Radcliffe is the only member not to have asked a question yet. Do you have a question for the panel?

Nora Radcliffe: I would be interested to hear the panel's views on the idea of producing a fully mapped croft register. What have been the barriers to that in the past, which might have to be overcome to achieve that?

Morris Black: As everyone knows, under the Land Reform (Scotland) Act 2003, the complexity of mapping estates makes producing such a register nigh-on impossible. Because of that, when the Land Reform (Scotland) Act 2003 was passed, we had to stop short of buying the whole estate and purchased only the common grazing. We are having to take a two-stage approach to buying the land because the land is not mapped properly at present and it is too complex for anybody to map crofting land as is required under the provisions of the Land Reform (Scotland) Act 2003.

Nora Radcliffe: Can you give me a lay explanation of why that is the case?

Morris Black: Estates have traditionally been sold on the basis of descriptions, not maps. In one feu that I remember, the description dated from 1924 and said that a piece of land was south-west of the road from Stornoway to Oronsay, which is a village that is further on in the estate. The croft was on the right-hand side of the road. Where is it now? We do not know. That croft cannot be defined on the ground now—that piece of land has gone. The mapping of estates should be left in the hands of the commission.

SEERAD has quite a good land-based register of crofts, croft land, common grazings and boundaries. It already has that in place through the integrated administration and control system. I do not see why that is not being used to address the problem of mapping estates.

Angus Macmillan: The same situation occurred in South Uist, where there are literally hundreds, if not thousands, of feus on the estate. It was impossible to make a registration under part 2 of the Land Reform (Scotland) Act 2003, as any one of those could be challenged legally and, if the registration was found to be incorrect, the whole application would be discarded. The same conditions would apply to a registration under part 3 of the 2003 act as to a registration under part 2. Do we need a mapping scheme? Yes.

Nora Radcliffe: Who is going to bell the cat?

Iain Maciver: A huge opportunity was lost in 1955. People who were alive then could have described the boundaries to a spade's width. There are now two problems: the floating feu issue, which makes life difficult, and the fact that there appears to be little evidence. Even the IACS forms are not, and should not be, relied on. When crofters were advised to submit plans, they were given ample warning not to double-claim. If there was any area where there was uncertainty over boundaries, they were told to err on the side of caution and to remove that area from the IACS if they could afford to do so. That was carried out in many townships by many grazings clerks. To say now that the IACS will be the definitive basis from which to start could cause problems for many townships.

Nora Radcliffe: We will probably find that there are strips of land that no one has laid claim to.

Iain Maciver: Possibly.

Nora Radcliffe: The bill offers scope for the creation of new crofts, but is enough land available in the Western Isles to create new crofts?

Iain Maciver: It is good that crofting is viewed in such a favourable light that people want to create more crofts, but the worry is that the crofting grants have been reduced and capped. If the area in which crofts can be formed is to be extended to the whole of Scotland, it does not take a genius to work out where all the money will go. If that happens, crofts in the new areas should be funded out of pillar 2 or pillar 3 assistance rather than out of crofting grants, so that the existing crofting communities are not deprived of that valuable support.

The problem with the creation of crofts in crofting areas is that, as you rightly say, there is very little land left. That will continue to be the case unless the larger estates are taken into

public ownership. However, unless constraints are imposed on tenancies, through the use of fixed-term tenancies for example, people will not find the prospect of buying land attractive, because someone could come along after they have bought it and buy it at fifteen times the rent.

The Convener: I have just tried to clarify with the clerks whether if a piece of subordinate legislation sought to identify extra geographical areas for crofts, this committee would have to scrutinise it. That would partly address the concern that, at a stroke, crofts could be created in the whole of Scotland. If particular geographical areas were to be designated as crofting areas, we would have to consider the relevant Scottish statutory instrument. I say that so that people can tell me whether I am right. I think that the provision in the bill will make it easier for people to establish new crofts. Through the process that has been discussed, which would involve local policy, the local development plan and the planning system, areas in which there was believed to be an urgent need for new crofts could be identified. I do not think that we expect that that will happen everywhere, but perhaps we can tease that out.

Our final witnesses will be from the Executive. We are accumulating questions that neither we nor you can answer and we will fire them at the Executive at the end of the process. No one should be too worried that we have not managed to answer all queries today, because they will be logged in the *Official Report* of today's meeting.

As none of my colleagues has any more questions, I thank the three witnesses. The evidence got highly technical, but we needed it to get technical so that we could get beyond the vision and get down to what the bill will mean in practice and what the witnesses think about how its provisions might be enacted and in what areas they would like changes to be made. The session has been extremely useful to us.

I will now explain what will happen next. I will suspend the formal meeting, we will have a break for 10 minutes and then we will move into an open session, which will allow us to hear other people's views more informally. If anyone in the room has something to say, we would like to know who you are. We want you to give your name to the clerks so that it will be recorded accurately on the official record.

When we come back from coffee, we will ask people to come up to the front table in turn, either to make their point—we do not want lengthy speeches to be made; I will stop anyone doing that—or to ask us questions. We need people to come to the front, partly to manage the session fairly and so that the microphones can pick up their comments and they can be recorded accurately by the official report. What you say will

become part of the evidence that we can read over at our leisure. Everyone will get a sheet on which to put their contact details so that we can ensure that we know who talks to us.

The official report will produce a full transcript of everything that everyone says, which will go on the internet and will be available for time immemorial. You might want to think about what you say in front of us; we certainly have to think about what we say. We are keen to obtain people's views on the bill, how they think it will affect their community and how it will impact on the experience of crofting. We are especially keen to find out how people think we can make crofting thrive in the next century and how the bill fits in with that.

That is our agenda for the next part of the meeting. I understand that tea and coffee are available at the back of the room. I inform people who are listening outwith this room that there will now be about 10 minutes' silence, after which the open session will begin.

15:30

Meeting suspended.

16:21

On resuming—

The Convener: We have two more panels of witnesses this afternoon. I welcome Duncan MacPherson, community co-ordinator of the south Lewis and Harris rural community housing pilot group and Angus Lamont, director of the Hebridean Housing Partnership. I am sorry, that was a Freudian slip—I pronounced Angus Lamont's name wrongly and should have put the stress on the first syllable; I have been lectured for years about somebody else with that name.

The committee has seen your written submissions, for which I thank you.

Mr Morrison: Mr Lamont and Mr MacPherson, you both live and work in the islands. Will you give us a brief overview of the importance of crofting support for housing and the role that it has played over many decades?

Mr Lamont will spend £30 million in the next decade. How will that investment sit with the forthcoming agricultural reforms? May we have an analysis first of the crofters building grants and loans scheme—the CBGLS—and then of the current scheme?

Angus Lamont (Hebridean Housing Partnership): Although I have lived and worked in the islands for the past 21 years, I am not an expert on crofting. However, I am aware of the importance of crofting to housing.

New housing development in the Western Isles relies on two areas of funding—supported funding from Communities Scotland and the croft house grant scheme—formerly the CBGLS—from the Executive. According to the comhairle's local housing strategy, upwards of 75 per cent of all new housing in recent years has received assistance from one of those sources. There is no speculative housebuilding in the Western Isles outwith Stornoway, so the normal access for first-time buyers is not available. Development costs are typically much higher in the Western Isles and that has inhibited speculative development, so the role of the croft house grant scheme has been of utmost importance.

To give you an idea of the kind of figures that we are talking about, the former CBGLS supported 45 to 50 houses a year in the late 1990s and at the beginning of this century. When the Executive reviewed the scheme, I was of the view that it was a retrograde step to remove the loan element. I am still of that view, but I have been informed that within one calendar year, in excess of 80 houses have been started under the new scheme. That demonstrates the importance of the croft house grant scheme in supporting young people to build a house for life. Most of those people remain on their crofts.

The £30 million that the Hebridean Housing Partnership will spend in the next 10 years can be broken down as follows. As a new stock transfer housing association, it will invest £12.5 million from the Executive's community ownership package, which was awarded as part of the transfer, and £3 million to £4 million a year on affordable housing. That will complement the croft house grant scheme.

Duncan MacPherson (South Lewis and Harris Rural Community Housing Pilot Group):

To clarify my position, I should say that I am the community co-ordinator for Harris, not for the housing project. I work with groups from areas in south Lewis and Harris to take forward the housing project.

The role of crofting in housing has been pivotal. It would be quite reasonable to say that most communities in the area and across the crofting areas of the Highlands and Islands would be more or less desolate today if crofting tenure had not been supported by the grant scheme for building croft houses. Historically, the economic resources that have been available to folk involved in crofting have been low. The key element behind crofting has been its ability to keep people in rural areas and to provide them with quality housing. A number of years ago, a cousin of mine visited friends of his who were smallholders in Cornwall and was appalled at the standard of housing that they were living in. They did not have enough

income to repair their house, let alone build a new one. The croft house grant scheme has made that possible for people on low incomes in the Western Isles.

Rob Gibson: Earlier, we were told that planning was not a problem in the islands in terms of housing development. I am interested in teasing out that issue a little further. If crofting communities, and grazings committees and township committees in particular, have a role to play in this regard, there has to be a way in which they can identify land in the township. People have talked about the local plan and so on but it was not clear to me whether they were talking about the statutory plan that the local authority is in charge of or a crofting plan, which might meet up with that. Could you comment on that?

Duncan MacPherson: It is interesting that the local authority has moved away from having extremely local plans at an island level to having a local plan at a Western Isles level, which is a lighter-touch approach. In that context, what is being proposed in the bill could be extremely helpful. With regard to local crofting communities, the bill says that the minimum size that would be considered would be a township size. Realistically, of course, I think that a community would be slightly larger than that. If communities could decide among themselves what kind of developments they would like to happen, especially with regard to housing, that would help to guide crofters committees and grazings committees in relation to the land that they might release for housing and would help to guide the local authority with regard to the views of local people about whether a particular housing proposal should be given the go-ahead.

A key issue for the delivery of housing solutions in this area—it is one of the key issues behind the project that I am involved in—is that communities that have recognised the need for housing are not sure about how to go about releasing that land for housing. The people on a grazings committee already have a croft and almost certainly already have a house. That means that they do not have an incentive to release land if it involves a lot of hard, voluntary labour. Therefore, new mechanisms are needed to ensure that communities that have recognised the need to give up land are able to secure support from agencies in order to do so.

16:30

Rob Gibson: Can either witness suggest how that might be achieved? How might we amend the bill to provide such mechanisms?

Duncan MacPherson: The project in which I am involved is trying to address the matter. We

propose to employ a co-ordinator who will work with grazings committees and community groups to help them to identify land. The co-ordinator will bring different agencies into the loop and enable people to talk to one another. I hope that the work will enable us to develop a methodology that can be applied throughout crofting areas.

In the context of our project, how the bill might be amended is a secondary matter. In our submission, we refer to rural housing burdens, but that has less to do with how the bill will help to make land available. A key problem that we highlight is the situation in which a crofter gives away his tenancy or sells it for £10,000 to help someone, only to find that six months later the croft is on the market at £50,000 or £75,000. When that happens, it sends a message to crofters that they would be mad to give away a tenancy at a low price. The rural community housing pilot working group noted that registered rural housing bodies are allowed to put a burden on a title, which could offer a useful tool. Crofts could be sold off at a low price—say £5,000—but if someone built a house on the land a burden could be created on the title that would allow the owner, if they sold the house, to realise the value that they had invested in the house but not to make speculative profit. Members of the working group asked whether a similar approach could be taken to the release of house sites on crofts, to prevent someone who has a tenancy from making a huge profit by selling off house sites. The burden could be designed to allow people to make a small profit but to prevent them from speculating. The approach would prevent speculation by people who come into crofting, particularly to new tenancies or new crofts, and would help people who want to stay in the community for a long time, if not for the rest of their lives—as I hope they would want to do.

Angus Lamont: The comhairle identified land availability as a big issue. Funds have been made available and the Hebridean Housing Partnership and the comhairle are looking for land. In the absence of a requirement on grazings committees to provide a strategic plan that identifies land in their area, we are starting to engage with committees. Members heard about examples of more progressive grazings committees, which are engaging with us because their members want to help people in their townships, including their sons and daughters, to get access to land. The comhairle has schemes for service plots and we want to bring land and service plots together in crofting townships—not on crofts but on grazing land.

Maureen Macmillan: I feel quite proprietorial about rural housing burdens, because I suggested amendments to the Title Conditions (Scotland) Bill to provide for rural housing burdens, at the request

of the Highland Small Communities Housing Trust. Rural housing burdens are an excellent tool that can keep houses in local ownership. How might rural housing burdens work in a crofting context? Would crofters pass land to you for you to sell on? You would need to be included in the Executive's list of bodies that may exercise the power to create a rural housing burden.

Duncan MacPherson: Land would not be passed to our project as such. Rural housing burdens are particularly relevant in the emerging community landowner sector. The community landowner, which would be the landlord, could put such a burden on to land, which could be passed on to people who are not specifically crofters.

A secondary issue—I confess that we had to do our preparation in a short time via e-mail and therefore did not have the chance to debate the issues through completely—is whether we could do something similar to rural housing burdens in relation to crofts to address the same issue. Such a burden would be aimed at the community landowner sector, as it is recognised that the landlord is working for the benefit of the community and is therefore able to make decisions on behalf of and for the good of the whole community. If the community thinks that the directors of the community landowning company are not doing the job properly, they can be replaced.

A recommendation for the committee to consider is whether such a mechanism—for the moment we will call it a rural crofting burden—could be developed. It could be used by suitable crofting community landowners and it would ensure that land remains available to the community and can be used to provide housing and other community amenities that are required.

Maureen Macmillan: That is an interesting suggestion. There are all sorts of parallels to that in housing, such as the golden share in stakeholders housing or the legislation about pressured housing areas. Crofts should be protected in a similar way.

Mr Brocklebank: I note from the south Lewis and Harris rural community housing pilot group's submission that you support the proposal that new tenancies be created. However, I think that you also said that they might

"be created without the right to buy or reassign".

Am I right in saying that that is a quote from your submission?

Duncan MacPherson: Yes. However, after we had sent in our submission, we realised that the bill proposes new crofts that cannot be bought by the tenant. In the rush to put our submission together, we mistakenly put in "reassign" as well.

Mr Brocklebank: On the face of it, your submission seems to suggest the creation of two types of crofters: a first-class type and a second-class type. Surely that would not be acceptable.

Duncan MacPherson: Are you talking about assignation or purchase?

Mr Brocklebank: Assignation.

Duncan MacPherson: We made a mistake. We very much support the creation of new crofts in respect of which there is not a right to buy, because we recognise that there is no incentive for a landowner to create a croft if it can immediately be bought out. In a community landowning situation, in particular, there not being a right to buy is of benefit to the wider community, as it means that land remains within the community.

Mr Brocklebank: So in your view assignation is very much a part of the package.

Duncan MacPherson: Yes, assignation would remain. The statement in the submission was a mistake on our part and I am happy to correct it.

Mr Brocklebank: Part of the dilemma is how we solve the following conundrum. On the one hand, we want to give people the right to do as they choose with the house, which is the financially beneficial part of the croft but, on the other, we want to retain the land in perpetuity and ensure that the croft is still used for crofting. Are there benefits in Iain Maciver's proposal that it would help if the clawback period were 10 years rather than five, because if a person was prepared to accept those conditions, it would prove that they were in it for the longish term?

Duncan MacPherson: A rural housing burden can supersede clawback because a burden can be indefinite. The Highland Small Communities Housing Trust has a detailed procedure whereby someone would not lose out by investing in a house. If they had to sell up and leave an area, contrary to their desire, they would not lose out financially. That is an important example.

A key element in the bill, which the pilot group recognised, is the proposal to address absenteeism by requiring that people live on a croft or within a few miles of it. That will help to address, if not overcome, the problem of abandoned crofts and of people not being there and not supporting the local community. If people live in the community and spend money there, the community will be stronger. Addressing the issue of absenteeism will be a major step forward to having more people living in an area and, by dint of that, having more houses, which will create a stronger community ethos.

Eleanor Scott: I would like you to comment on something that I have heard expressed in crofting

communities on the west coast of mainland Scotland. It is a feeling that crofting land is always regarded as the first option when land is needed for affordable housing because the grazings committee in an area may be a softer touch for getting a bit of land than a landowner who has empty acres. That might not be an issue on the islands because all the land might already be under crofting, but I am interested in your view on that.

Duncan MacPherson: It is an interesting one. I do not know whether “softer touch” is the right term to use in this context. A key aspect of a crofting community is precisely that it is a community; people can look beyond their own individual interests and decide what is best for the community. On that basis, grazings committees and individual crofters have been willing to give up land to provide houses to meet community need.

People generally do not think about approaching private landlords simply because they are regarded as private people who are remote. I was at a housing conference a couple of years ago at which a researcher said that he had been surprised to find that private landlords were willing to give up land, but their concern was that if they gave up land cheaply, other folk could make a profit out of it. In many cases, that consideration was holding private landlords back.

I have a specific example from my own experience. I was involved in the community purchase of the North Harris estate, which the North Harris Trust now runs. Prior to the trust taking over the land, we would have said that there was no issue with the local community in north Harris needing housing sites. It simply was not spoken about. As far as we were aware, the local housing association had managed to provide good numbers of social housing. Individuals who had crofts had built their own houses and some individuals had bought sites on which to build houses. However, within six months of the North Harris Trust taking over the land, it had a list of 25 names of people who said that they needed a house site and could not get one. The issue had existed beforehand, but it had just been invisible.

It is not necessarily the case that private landlords are unwilling to release land for housing; that is definitely an issue of community perception. Once the community in north Harris had taken control of the land, people were willing to approach the community landlord in a way that they would never have thought of doing with a private one.

The Convener: Perhaps you also raised their expectations. One of the issues that you could consider is how to provide long-term, sustainable housing for local people. The issue that we are interested in is the extent to which there is a

specific role for crofting housing and how the process of building houses on croft land and bringing affordable housing into the system can be managed without removing crofting land. It would mean that people who wanted to live in a remote rural area or near a township could access the land or get a house without necessarily having to be a crofter. The question is how both kinds of demand can be provided for and how interest is generated.

Angus Lamont: Communities Scotland runs a parallel grants scheme that perhaps needs some work done on it. It is called the rural home ownership grant and it enables individuals to build their own home, but the level of grant that is available and the means testing that is involved have meant that the uptake in the Western Isles has been low. If that grant scheme were adjusted, it could certainly assist young families to get into homes of their own. Infrastructure issues and other matters that were mentioned earlier also need to be addressed, of course.

The Convener: Nora, do you have a question?

Nora Radcliffe: Everything that I wanted to ask about has been touched on.

The Convener: You do not have to have a question for the sake of it. That sounds fine to me.

I thank both witnesses for coming before us. We wanted to ensure that we debated the connection between crofting housing and more general housing in the area, so I thank the witnesses for their evidence on that.

We have one last panel of witnesses to hear from, so we will pause while we get them in front of us.

16:46

Meeting suspended.

16:47

On resuming—

The Convener: We move on to our final panel of witnesses for this afternoon. If two of my colleagues disappear from the table, it is not from a lack of application to duty but merely because they must leave at 5 o'clock to catch the plane tonight. They have committee meetings tomorrow morning, so they need to get away. They wanted me to make that clear so that the witnesses did not think that they were sneaking away early. *[Interruption.]* That is, if we do not destroy the place in the meantime.

We will not be here for three and a half hours like we were at our first evidence-taking session last week, but we want to get through our

questions. We have before us Murdo Mackay, the economic development officer in charge of crofting and land resources for the Western Isles Council; Donnie Macaulay, the chief executive of Western Isles Enterprise; and John Price, the development director of Lewis Wind Power Ltd. I thank the three of them for the written material that they submitted in advance of the meeting.

We will kick off with questions. I will give Nora Radcliffe and Maureen Macmillan preferential treatment.

Nora Radcliffe: I will go straight to the really sticky question: where should the balance be struck between the rights of crofters to realise value from their crofts and the future of crofting as a protected tenure? Whom does the free market benefit and are they entitled to that benefit? Whom should it benefit?

Donnie Macaulay (Western Isles Enterprise): We sense that there is a market for crofts, as has been stated. That said, when somebody buys into crofting, they buy into various assets, obligations and responsibilities as well, and they perhaps buy into a particular lifestyle. A market is necessary and exists but it needs a certain, appropriate form of regulation to succeed. Crofting is part of a community that forms a complex jigsaw, as I am sure you all know by now, and it is important that the various pieces in the jigsaw are addressed to some extent by some regulatory influence. Although we cannot have our cake and eat it, it must be recognised that the level of regulation must be appropriate to the circumstances.

Murdo Mackay (Comhairle nan Eilean Siar): I emphasise that there is a balance to be struck. Although highly inflated tenancy values are a bar on new entrants, it is also true to say that tenancies that were at one time of no value presented an equally difficult problem for crofting communities, where tenancies tended simply to be collected by individuals.

Effective regulation ought to be used to moderate the worst excesses of the market. If the Crofters Commission has an obligation to regulate, there are opportunities for the bill to take the worst excesses out of the system.

John Price (Lewis Wind Power Ltd): As far as commercial development is concerned, there is an equal share of the value. The crofter is entitled to the same share of the development value as the landowner. I will explain where I think the inequality comes in. Some crofting land will have turbines or wind farm development on it and some will not. The money that goes to the crofters is unequally spread, as a previous witness mentioned.

Nora Radcliffe: This is another aspect of the whole thing. How much is the market pressure a

housing market pressure as opposed to a crofting market pressure? Should we be addressing this as a housing issue, to take pressure off the crofting market?

Donnie Macaulay: One of the previous speakers made an important point about the latent demand for housing. No doubt, there is an express demand in some communities. I have no data that suggest to me that there is a figure out there that confirms whether the initial demand is for housing or land use. If we in our organisation want strengthened communities and thriving businesses, with people building up their capacity to operate in those communities, living and working there and, therefore, providing a higher level of occupancy, rather than absenteeism, we have to work towards that aspiration.

Murdo Mackay: There is no doubt that tenancy market values are being driven by the housing side, not so much by the housing market but by the capital that is being released from the housing market elsewhere, which is being reinvested in the housing market in the Hebrides. That is definitely having an impact on the number of houses that are being built, as well as on the demand for land, as the previous panel were discussing.

As the comhairle highlighted in relation to its own policy, land for housing is in short supply—both the actual physical ground and land with the appropriate services, such as water and roads. You might not think that, looking at most crofting communities—instead you would imagine that there are plenty of good sites available. In fact, the situation in each township will be much more complicated than that. There is already a limit on the number of houses that may be built in some townships.

The Convener: Maureen Macmillan will wish to get her question in before she has to leave.

Maureen Macmillan: Thank you. It is about whether or not the Crofters Commission should be elected, rather than appointed. A number of people have given us evidence to suggest that it would be better for it to be elected. The comhairle itself has indicated that view. If the Crofters Commission were elected, at both high level and local level, would that make it difficult for it to make the difficult decisions on regulation that might be necessary? If the commission put somebody off their croft, it would not get elected the next time.

Murdo Mackay: The individual who was put off their croft might not vote the next time round. It would depend on how rigorously the Crofters Commission regulated. Again, a balance must be struck. The feeling that came out in the comhairle's deliberations was that there was a lack of representation on the commission from among the crofting communities.

Maureen Macmillan: I should not make light of such a serious matter. Do the other witnesses have any views?

Donnie Macaulay: We assumed that if the Crofters Commission was to be a non-departmental public body, it would go down the well-established route of having job applications, selecting people on merit after they have been interviewed and suchlike. However, I am sure that others have a different view.

Maureen Macmillan: There are precedents in similar bodies that have elected representatives.

Murdo Mackay: One suggestion that was made at Comhairle nan Eilean Siar's meeting was that arrangements could be similar to those for the health boards. There could be area representatives of the crofting counties from each local authority, for example.

Maureen Macmillan: So people would be indirectly elected. Does John Price have any thoughts about that?

John Price: No. As a developer, I do not think that it is my place to have an opinion on the matter.

Mr Morrison: I turn to renewable energy. As the three panellists know, exciting and far-sighted renewable energy land and sea plans are being debated. I do not think that the panellists have the benefit of having read the latest missive from Mòinteach gun Mhuileann—Moorlands without Turbines—which rightly states that

"crofting is at the heart of maintaining families in rural Lewis."

That is the part of its letter with which I agree.

How will great and small renewable energy initiatives help to underpin the villages and families to which Mòinteach gun Mhuileann refers? A great number of important decisions have been taken at a national level—for example, on capping transmission charges, on which, bizarrely and absurdly, some people are neutral. My question is simple. How do members of the panel see renewable energy at a small, micro, community level and on a greater scale benefiting current families and—more important—generations that are as yet unborn?

Donnie Macaulay: Western Isles Enterprise is involved with renewable energy on several different levels. The community energy company plays a firm role in developing community-level schemes, from individual organisational projects to wider community renewable energy schemes. That has several benefits, from encouraging capacity building in project management and the company taking forward its own agenda to having a planned and designed-to-last alternative source

of power in local communities rather than being dependent on fossil fuels.

We are involved in the process and providing benefits in another couple of ways. First, there is our involvement in training island tradesmen and others to cope with the new skills requirements and the new market opportunities that are provided, so that benefits will go right to the heart of the community and to individual households through increased incomes. Increased incomes can also be derived from investments such as that at Arnish point and in other smaller businesses. At Arnish point, we have developed an infrastructure that will help—I hope—to exploit local and non-local markets in the United Kingdom and elsewhere. Manufacturing and servicing in the Western Isles can provide employment, income and business opportunities right through the supply chain that will directly benefit the Western Isles at large.

17:00

Murdo Mackay: The comhairle has already stated—and everybody knows—that it is supportive of wind farm developments. In fact, it updated its crofting policy last autumn. If I recall correctly, the policy states that the comhairle recognises that crofters and crofting communities are well placed to take advantage of developments on common grazings and crofts.

Of the bill's proposals on alternative development, it is hard to think of a more obvious one than renewable energy on common grazings. Anyone who is involved in agriculture, as I am, knows that it will face some serious challenges in the next seven to 10 years as the common agricultural policy reform bites. Opportunities to develop alternative streams of income from common grazings are pretty limited, but renewable energy is an obvious one and communities can take advantage of that.

John Price: There is a unique compatibility between renewable energy and crofting. The north-west coast of Scotland is high in wind energy. The land that wind farm developers are looking for is probably the least productive land. They are looking for the most remote and windiest areas. Furthermore, the developer wants to lease only the footprint of the wind farm, which is 90 per cent roads. Those roads can be used for crofter access with no constraints on their use. Stock can graze right up to the turbines. Only a small amount of land is taken out of crofting and the land can be used for access.

In exchange for that small amount of land, the revenues to the landowner, to the community landlord in the case of the Stornoway Trust, to the crofters and to the community are far in excess of

any other income that is likely to be available, and they will be available for 20 to 25 years.

Wind energy in Scotland has largely avoided the crofting areas. There are two reasons for that. First, some developers think that there are complications with developing in crofting areas and have stayed clear of them for that reason. Secondly, crofting areas are remote from connections. If community schemes are to be facilitated—whether here in Lewis, in Durness or in Kinlochbervie—there must be some large schemes to establish the connections.

I believe that wind energy and crofting can go hand in hand.

Eleanor Scott: I have a general question on development. It is clear from Highlands and Islands Enterprise's submission that it is concerned about the Crofters Commission having an expanded developmental role. HIE does not think that that is appropriate. It believes that the commission should focus on the regulatory aspects.

Who should have a developmental role in relation to crofting? How should the agencies work together to achieve the developments that we all want?

Donnie Macaulay: HIE's submission makes a distinction between the regulatory role and developmental work, but the regulatory role and the disbursement of support scheme grants for agriculture are clustered in the one group. We think that there is a foundation to build on.

For example, over the past few years, following the former Enterprise and Lifelong Learning Committee recommendation that local economic forums be established, the forum in the Western Isles has been relatively successful at providing a reasonable division of responsibilities, in particular for business support schemes. The forum and the wider community planning partnership can be used to ensure that there is as little duplication and clutter in the arena as possible. That is consistent with the approach that we have taken over the past few years in the Western Isles on business support schemes and understanding who does what for whom.

Eleanor Scott: Has taking on a development role deflected the commission from its regulatory role?

Donnie Macaulay: It is difficult to perform both roles. The more an organisation focuses on development at a time of limited resources—no organisation has unlimited resources—the less it is able to focus on the regulatory process. Quite apart from that, there is arguably a conflict between the two functions in some instances.

Murdo Mackay: The comhairle raised in its submission concerns about the possible duplication of effort of more than one body delivering grants in rural areas. There is also a concern about the possible conflict between the development role and the regulatory role. The logical conclusion is that, at some point, a development in which locally based development managers are involved will be the subject of a regulatory decision. I cannot see how a conflict of interest somewhere down the line can be avoided.

The Convener: That could be said of the council as well. The issue is how the roles are managed, is it not? There is an issue of focus. Would you want the Crofters Commission to have an exclusively regulatory role or is there scope for it to do some kind of developmental work? To what extent is it about partnership? We have heard from housing agencies this afternoon. I do not think that you would say that the Crofters Commission should not have an interest in housing or planning. It is about finding the right dividing lines.

Murdo Mackay: It is a question of balance. The crofting community development scheme in the Western Isles has been successful. I am not saying that the commission cannot perform a development role.

The Convener: It is about having a focus.

Rob Gibson: I am particularly keen to focus on conflicts between the interests of a crofter, or small group of crofters, and the interests of the wider community. Wind farms clearly create such conflicts. The submission from Lewis Wind Power suggests that crofting community bodies should be given a new power. Will you explain that to us, Mr Price? I refer to paragraph 3.2 of the submission, which begins:

"The Proposal introduces an entirely new concept into Scots law."

John Price: The new concept that is identified is that, under the bill, a registered lease may be bought out. With any commercial development that takes place over a long period and requires a large up-front investment, one has to be certain that one will be able to carry out the whole business plan. That is particularly relevant to wind farms, because the planning process can take five years, which is expensive. The whole capital cost of the wind farm is expended on its construction and machinery before any income is realised. Even for the first five to 10 years of production, developers would still be paying back their loan. It could be between years 10 and 15 before they see any return on their investment. During that period, there is a chance that the lease may be bought out at a value that is uncertain—I think that the bill proposal is for market value, but that leads to the

question: what is market value? Frankly, in that situation, no bank would put up the money in the first place. Effectively, that part of the bill will stymie development in crofting areas.

Rob Gibson: Is not the issue that proposals have been made for development beforehand and the changes to crofting legislation are taking place afterwards? Indeed, thinking ahead, would we not go about development on crofting land slightly differently?

John Price: I am not sure that I understand what you are getting at.

Rob Gibson: You have given the specific example of AMEC making a proposal for a wind farm on Lewis. Three crofting estates are involved. You are suggesting changes to the way in which that works in future. That might secure your investment, but is it the best way forward from the crofting community's point of view?

John Price: No, but with all due respect, I think that the member is mistaken. What we are asking for is the status quo. We have a lease; indeed, we have three registered leases on each of the estates. For example, under the 2003 act, a crofting community could buy out the Barvas estate. Under the bill, the community could decide at some point that it did not want a wind farm and could buy out the lease at market value. Similarly, an alternative wind farm developer could come along and say, "We will give you more than that lot is giving you. We will back up your buyout of the lease." The proposal will create so much uncertainty in the market that nobody will start out on the process. Although we support the idea that the interposed lease issue should be sorted out, we do not support the idea that any lease should be bought out. That is a mistake; it will reduce development—certainly, wind farm development—in crofting areas.

Rob Gibson: Of course, your proposals cover three different estates and three different states of development. That raises particular hazards for the development that you propose. I understand exactly what you are saying. It is interesting to note that the legislation that the Executive proposes does not help to resolve things, one way or another. Some sort of change needs to be made to the bill. Are you surprised at the proposal?

John Price: Absolutely not. The interposed lease is a bad thing; it has upset everybody. The issue with the interposed lease is one of anti-avoidance; the 2003 act recognised that. We believe that similar provisions could be introduced in the bill to counter the interposed lease. My legal advice is that the issue is complicated. We are willing to submit in writing the detail of the idea that we have put forward.

Rob Gibson: That would be useful. Thank you.

Mr Brocklebank: Rob Gibson has covered some of the ground that I wanted to cover on renewables. I will focus on the wind turbine developments for Pairc. We have heard about the various tensions that the proposals have created. Professional valuations indicate that, based on an agricultural land valuation, the figure for a community buy-out of Pairc would be around £250,000. Obviously, the anomaly of the situation is that the landlord would now expect an inflated price—we have heard mention of a six-figure valuation. That price would make it impossible for the local community to compete with a wind turbine company. Surely something is wrong with that situation. How can it be resolved?

John Price: In broad terms, it probably has been resolved. The Galson buy-out means that there is now a formula to deal with the situation. That buy-out was amicable; the agreement recognised that there may—or may not—be a wind farm on the land at a future date. The people involved sat down around the table, did the negotiations and sorted out the issue. The fact that the community at Pairc and its owner are not doing that is a different issue. It is up to them to do that—indeed, they probably should do that.

Mr Brocklebank: Can anything in the bill be altered or clarified to ensure that such anomalies do not arise or can be overcome?

17:15

John Price: That is a difficult question. Until a project receives planning permission, no one knows whether it will be constructed and, until a buy-out takes place, no one can be sure what the majority of people think about a wind farm. To sort out the issue, one would have to anticipate a number of scenarios, and I cannot see how that could be framed in the legislation.

Mr Brocklebank: Perhaps we can explore the issue in future.

Mr Morrison: I have a supplementary question that relates directly to John Price's comments on the negotiations that he carried out. As a developer, how did you find the current arrangements, under which you negotiated directly with Stornoway Trust, the oldest and largest democratically run estate in Scotland? Would you change anything in law in that respect?

John Price: No. We came here initially to deal with only Stornoway Trust. We thought that, given its size, the estate would be able to accommodate the size of wind farm that we required to get the interconnector to the island. However, because of various environmental designations, particularly the special area of conservation designation, we

had to speak to three estates. We managed the whole thing basically because of the involvement of Simon Fraser—who was, if you like, the common link between all three estates—and Iain Maciver. In fact, the negotiations were conducted not with each estate in isolation but with all three together. Although they negotiated a hard commercial deal, all parties acknowledged the necessity for a lease to give certainty over the rights to build a wind farm if planning permission were granted. We are worried that such an option might disappear as a result of the bill.

The Convener: Quite a few submissions claim that some crofting communities are more active than others and are better placed to deal with the challenges that they face. What provisions in the bill will assist economic development and allow crofting communities to thrive and find ways of moving forward?

Donnie Macaulay: We welcome the fact that new crofts will be made available, but some kind of incentivised planning at township or regional level will not only allow us to build on the quite significant capacity building work that has already been carried out in these communities but help us to move away from the current rather ad hoc situation with housing and other commercial or industrial development and assist communities and agencies in recognising what each party can realistically expect from and give to a partnership.

Murdo Mackay: The bill's proposals to allow alternative uses of crofts and common grazings will provide the opportunity for more diversification activities to take place. We also welcome the proposed simplification of the resumption process and the introduction of a time-limited resumption, because they will allow developments to proceed. It might even be possible to link those measures to the terms of the planning permission to ensure that resumed land reverts back to crofting tenure at the end of the development.

The Executive must bear it in mind that crofting does not exist in isolation from other support schemes. Indeed, the committee has already heard from a young crofter who, although he had got his tenancy, could not secure his entitlement to single farm payments or national reserve payments. Such stories make you realise that there is a market even for crofts and that if a person wants one, they have to buy it. The legislation is only one of several barriers to getting into crofting; indeed, anyone who endeavours to establish an agricultural development on croft land has some steep hills to climb.

John Price: I agree with the comments about resumption and welcome the bill's proposal to make agreements that can be recorded, registered and made binding on successors. However, we take issue with the proposed requirement to obtain

unanimous agreement. Unanimity is simply not possible, especially given the number of absentee crofters.

We want agreements to be binding on successors and carried by a majority, because that might provide a means of getting over the issue of individual payments. For example, the majority might vote to give equal shares not just to the crofters on whose land a development lies but to all crofters. Such an approach would be beneficial.

The Convener: The witnesses might be relieved to hear that we have exhausted our questions. I thank them for their evidence.

I hope that everyone has found the meeting interesting and enjoyable. We certainly wanted it to be challenging not only in examining the bill's major aspirations but in testing out its detail on the people who day in, day out will have to deal with its provisions, work with the Crofters Commission and so on. We wanted people to give us their sense of what the bill gets right and what needs to be changed. As a result, we are grateful to the witnesses who got stuck with some very detailed technical questions that had to be asked.

I thank our hosts, Western Isles Council, particularly Helen Froud and Christina Smith, who worked very hard with our clerks to ensure that everything ran seamlessly and that, for example, tea, coffee and biscuits were available for our earlier, very productive networking session, which went smoothly.

I thank, in particular, all the participants who contributed actively to today's meeting, who made written submissions and who will, I hope, feed back to their communities, friends and families their thoughts about today's meeting. I encourage people to send in submissions or to get in touch with their representatives to let us know what they think. We are grateful for people's efforts so far.

The committee's consideration of the bill is tantalisingly short. We started the process only last week. Next week, we will take evidence from landowners and agents on extending crofting communities, in particular the development of new crofts and crofting counties, and on the legal perspective, which I am sure will prove challenging to those of us who are not lawyers. After that, we will visit Oban and Inverness before we finally talk to the minister. Although our stage 1 consideration is quite short, we have an awful lot to do in the next few weeks. Today's meeting has allowed us to hear crofters' experiences and to think through local issues and how crofting legislation relates to agriculture, housing and planning. We have many difficult issues to consider before we pull together our stage 1 report.

Meeting closed at 17:23.

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