

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Monday 8 May 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Monday 8 May 2006

	Col.
INTERESTS	3167
CROFTING REFORM ETC BILL: STAGE 1	3168

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

15th 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)
*Richard Lochhead (Moray) (SNP)
*Maureen Macmillan (Highland and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Trish Godman (West Renfrewshire) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jamie McGrigor (Highlands and Islands) (Con)
Dave Petrie (Highlands and Islands) (Con)

THE FOLLOWING GAVE EVIDENCE:

Ken Abernethy (Argyll and the Islands Enterprise)
Duncan Baird
Ian Gillies (Argyll Estates)
Nigel Hawkins (John Muir Trust)
Ross Lilley (Scottish Natural Heritage)
Donald Linton (Scottish Crofting Foundation)
Donald Macarthur
John MacKintosh (Scottish Crofting Foundation)
Lorne MacLeod (Isle of Gigha Heritage Trust)
Audrey Martin (Argyll and Bute Council)
Maf Smith (Scottish Renewables Forum)
Iain Turnbull (National Trust for Scotland)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Corran Halls, Oban

Scottish Parliament

Environment and Rural Development Committee

Monday 8 May 2006

[THE CONVENER *opened the meeting at 14:04*]

Interests

The Convener (Sarah Boyack): Good afternoon and welcome to the Environment and Rural Development Committee, which is meeting in Oban. I welcome our witnesses, the members of the public and press and colleagues at the table. I remind everybody to switch their mobile phones or BlackBerries to silent. We have Dave Petrie with us and I am told that Jamie McGrigor will attend, although a little later.

Our first agenda item is a declaration of interests. On 4 May, the Parliament agreed that Richard Lochhead should be appointed to the committee. I welcome him back to the committee—he was not absent for long. The code of conduct for members states that it has been established as good practice that members should declare interests that relate to the remit of their committee at the first committee meeting they attend. Richard, do you have any relevant interests to declare?

Richard Lochhead (Moray) (SNP): Thank you, convener—it is nice to be back. The parliamentary authorities have asked me to complete the relevant forms in the next few days but, at this stage, I am unaware of any relevant interests that I will declare.

Crofting Reform etc Bill: Stage 1

14:06

The Convener: We now move to today's real business. Agenda item 2 is scrutiny of the Crofting Reform etc Bill. I hope that we will have an interesting, stimulating and, from our perspective, useful session. This is our fourth evidence-taking session on the bill. We are keen to talk to people about the bill. The committee's job is to make a recommendation to the Parliament on the principles of the bill. We are keen to meet people from in and around Oban, to hear about the experiences of people who live in the system of crofting and to reflect on the challenges for crofting in the 21st century.

We will hear formal evidence from four panels of witnesses, whom we have invited to speak because we know they are involved in crofting. We have witnesses from estates and organisations in the area that have an interest in crofting.

After the second panel of witnesses, we will have a break from the formal meeting, during which we will invite members of the audience to speak, to ensure that their comments are on the record, too. We are happy to do that, because we are keen to get individuals' views as part of the process. I will explain how that part of the meeting will work when we get there but, for planning purposes, I point out that we hope to have that part at about half past 3.

Our first panel of witnesses is made up of Duncan Baird, who is a chartered surveyor specialising in crofting, agricultural and community development; Donald Linton, who is the Argyll mainland representative for the Scottish Crofting Foundation; John MacKintosh, who is a member of the Scottish Crofting Foundation's crofting reform working group; and Donald Macarthur, who is a crofter from the isle of Tiree. We have a range of interests. We are grateful for the written evidence that you have submitted, which we have read.

We will go straight to questions.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The bill raises interesting questions about who is responsible for the development of crofting communities. At present, the Crofters Commission has a regulatory role, but should it be involved actively in developing crofting communities and, if so, what should it be doing in those communities? I ask Duncan Baird to begin, as he mentioned the development role in his submission.

Duncan Baird: One important point is that the regulatory and development roles of the Crofters

Commission should be separate. From what I can gather, it is envisaged that the same staff will perform both roles, which I think would be problematic. If somebody is to see through their regulatory role properly, it will be difficult for them also to perform a development role. The Crofters Commission is the appropriate agency to help, advise and support crofting communities and to implement initiatives for their area. There is no reason why the commission could not work extremely well alongside the enterprise agencies.

John MacKintosh (Scottish Crofting Foundation): I agree that we need to consider separating the two roles. There is some suspicion—that is all—that a regulatory role can be manipulated to achieve development objectives. In the context of standards in public life, it is important to have and to be seen to have a clear-cut role that is not influenced by other interests. I have been concerned about that for about 10 or 12 years. It is important that the body that develops crofting is separate from the body that has general development responsibilities, because crofting has special features. Small-scale agriculture is one such feature.

Consideration should be given to creating a specific crofting fund, which by and large could be managed by crofters and would replace the bits and pieces of money that we receive as add-ons to other parts of agriculture policy. Such an approach would greatly enhance the status of crofters and would be much more like the approach in Norway, where I understand all agricultural support is handed over to farmers for them to use—subject to certain guidelines, I presume—to support the farming industry in Norway.

Mr Ruskell: Should the fund's administration be part of the Crofters Commission's role?

John MacKintosh: I would expect some public element to be involved in that body—it might not be called the commission. Staff from the current commission could be involved, because such people have knowledge and experience of wider issues to do with crofting and their perspective is different from that of people such as me—we work on the inside of crofting looking out, whereas the commission's staff are on the outside looking in. We should not lose that asset. However, crofters should have control, so that they can develop objectives for crofting in a democratic fashion and move crofting forward. In my submission I set out a summary of my view and say that the arrangement that is proposed in the bill reflects a negative view of crofting. There is a much wider, more positive view of crofting, which has been missed out of the discussion so far.

Donald Macarthur: The Crofters Commission will do well if it fulfils its regulatory role. The

proposed reforms are supposed to reduce bureaucracy on the commission, but the commission will have its hands full with the regulatory side of matters.

The enterprise agencies should become more involved in agriculture—crofting and farming—than they have been during the past two years and could be given a formal role.

Duncan Baird: Crofting has a good fit with the approach to addressing affordable housing need in remote and rural areas. I cannot see why Communities Scotland could not be involved in the development of a cost-effective way of making land available for affordable housing. For example, an outgoers payment could be tied into the croft entrants scheme, to help to free up land.

Mr Ruskell: Duncan Baird calls for the regulation of grazings committees in his submission, but is there a danger that if that were done in the wrong way it would be regarded as a top-down approach? How would the commission regulate grazings committees? There is a fine line between supporting someone to develop capacity and achieve things in their community and regulating them.

14:15

Duncan Baird: I could not agree more. That became apparent to me through my experience of working with community companies, such as the one established on the isle of Gigha. It is vital to ensure that community companies are democratic and properly constituted at the outset so that the community is empowered rather than the opposite. They must be constituted in such a way as to ensure that everyone is involved and that the structure is open. Crofting currently does not have that sort of structure.

Mr Ruskell: I presume that grazings committees could be set up as charities. They would then fall under charities law. You suggest that they stay as grazings committees but that the commission regulates them.

Duncan Baird: One of the biggest drivers for me was to look at their governance, but if they could get charitable status—that might be questionable—it could certainly be of great benefit to them.

Maureen Macmillan (Highlands and Islands (Lab): What level of demand is there from local people for crofts in the crofting areas of Argyll and Lochaber?

Donald Linton (Scottish Crofting Foundation): Thank you for inviting me to give evidence.

There is a big demand for crofts in Argyllshire among people between the ages of 25 and 35. A good croft was lost at Taynuilt, although at least nine people were after it.

Maureen Macmillan: Do people look for a croft because they want a house or because they want to croft? Are they committed to crofting?

Donald Linton: They are definitely committed to crofting.

Maureen Macmillan: You indicate in your submission that at the moment there are not many opportunities for them.

Donald Linton: As Duncan Baird knows, we have been very lucky because a family has bought Kilmaree and created five new crofts—and everyone who is going in there will work it as a croft. Some will be worked with tunnels, others with sheep, but they will all definitely be worked as crofts. Furthermore, all those people are young, which is great for the glen.

Maureen Macmillan: It is excellent news that so many young people want to become crofters. How could the bill help young people to become crofters? Other members of the panel might also like to answer that question.

Donald Linton: It could offer them good grants for housing. Argyllshire is on the low base, so the grant is £11,000 for a house, which would not pay for a kitchen or a toilet in a new house. That level of grant is scandalous for Argyllshire. Timber is the same price in Argyllshire as it is in Achiltibuie.

Duncan Baird: The key to helping young people in the area is to free up croft land or to create croft land. The simple fact is that none is available. As Donald Linton says, there is a huge demand for crofts. People are open and honest about the fact that having a house is a big part of that, but why should it not be? At the same time, they have a passion for crofting. Plenty of recent examples not far from here show that.

Maureen Macmillan: What about absenteeism? Are some crofts in Argyll not being worked, or is everybody who has a croft committed to crofting?

Donald Linton: I do not know what the definition of not worked is. For example, set-aside is not worked: it is cut once a year. Duncan Baird will verify that, especially in Taynuilt, most of the crofts are worked; at Kiel Crofts and Stronmilchan, the crofts are all worked. The situation is the same in my glen.

Maureen Macmillan: So you hope that new crofts will be created, as is legislated for in the bill.

Donald Linton: Definitely.

Maureen Macmillan: And you hope that Argyll might be a place where that could happen.

Donald Linton: Personally, I cannot see landlords making new crofts. Government bodies such as the Forestry Commission will make new crofts. I cannot see privately owned estates making new crofts.

Maureen Macmillan: Unless the crofters came to an agreement not to buy their crofts.

Donald Linton: Yes.

Maureen Macmillan: Is the market value that is now perceived to be in crofts part of the problem in relation to people getting crofts? Some assignments now go for very high figures. Is that happening in this area?

Duncan Baird: Yes, very much so. Two crofts that were recently sold in Lismore each fetched well over £200,000. Those prices are prohibitive. It is similar everywhere else in the west Highlands. It is not something that is going to happen; it is here now. Such prices are way beyond the means of anybody here, and young people have no chance whatever.

Rob Gibson (Highlands and Islands) (SNP): The Crofters Commission tells us that there are 1,079 crofts in Argyll, of which 393 are owned, and that between Skye, Wester Ross and here, there are some 426 absentees. In Argyll, are absentees away for the long term or, in relation to the creation of new crofts, is there any likelihood of the absentee system working out? People say that it is either/or, but perhaps it should be a combination of both. What does the panel have to say about that?

Donald Linton: Argyllshire is a big lump of ground—it has more coastline than France. I do not know of absentee crofters on the mainland between Appin and Lochgilphead. There are none in Dalmally or Taynuilt. Most crofters work their crofts in those townships. It is the same with Kiel Crofts out in Benderloch. They are all worked. Would you agree, Duncan?

Duncan Baird: I agree with you to an extent, but on some of the islands, for example Lismore and Mull, there is quite a significant problem of absenteeism. What you are perhaps driving at is that it is vital that the situation is tightly regulated. Whatever the bill is intended to deliver, it will deliver it only if the regulations are really tight.

Rob Gibson: Are regulations in place at present?

Duncan Baird: Yes.

Rob Gibson: Would that be the case in Tiree as well?

Donald Macarthur: In a meeting that the Crofters Commission had on Tiree two years ago, it was clear that its policy with regard to Tiree was that as long as the crofts were being worked—

even if they were sublet—it would not take any action. However, there are some absentees. In my opinion, and probably that of the Scottish Crofting Foundation and everyone else, instead of absentee tenants it would be nice to see those crofts in full-time occupation, with perhaps three or four kids at the local school.

Rob Gibson: Is it the case that absentees mean houses that could be occupied by local people but which are tied up? Is that the big issue? Do any of you wish to expand on that?

Duncan Baird: It is a joint issue. Housing being tied up is a big problem when you have acute housing need problems, but there is also the fact that you have croft land sitting not being worked as actively as it could be. In all these communities, everywhere you go, there are loads of young people—more than ever at the moment—desperate to get a start in crofting. The problem is certainly not a lack of demand.

Rob Gibson: We can see that the population of younger people in Argyll is dropping. They want to have opportunities elsewhere, but if they wish to come back when they are older, their chances are stymied by not being able to get back onto crofts of their own.

Duncan Baird: It is certainly a significant factor. In fact, the creation and use of crofts in a lot of these fragile communities can be a really good way of tying key workers to an area who may otherwise leave. Islands such as Colonsay and Gigha are looking hard at the creation of crofts for that purpose.

Rob Gibson: I am trying to weigh this up. Is it more important to deal with the absentee problem or to create new crofts?

Donald Macarthur: The crux of the matter is to try to reduce the age of crofters. If we could come up with some substantial money for the croft entrant scheme and for the retiring crofter, it would save crofters having to work till 80. Crofters cannot afford to retire. They have to keep going and take what money is coming in. You cannot retire on the state pension. By the time I retire, it might not be there anyway.

If something substantial was done to enable crofters to retire, it would reduce the age profile of crofters and make more crofts available. At the moment, the average age of farmers is about 56; the average age of crofters must be substantially more. If we could reduce the age profile of crofters, we would get a more vibrant crofting community with more young crofters. The bill cannot be done on the cheap: the capital will have to be found from somewhere to make a substantial investment in the croft entrant scheme and to help crofters to retire.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): One of the recurring themes of our evidence taking over recent weeks is whether the Crofters Commission has the necessary regulatory powers. Most people appear to believe that the commission had such powers at one stage, but that they have been eroded over time. One of the causes célèbres that people keep talking about is the Taynuilt case, where houses were built on good inby land. One or two of our witnesses today mentioned the case in their written submissions. Perhaps panel members will give the committee their view of whether the Crofters Commission had any alternative other than to accept the decision to build on that land.

John MacKintosh: At a meeting that the foundation had with the commission, when I asked its legal officer what would have happened if the commission had gone through the procedure on absenteeism with the incumbent in the croft, his reply was that another crofter would have been put in. He went on to say that, as the developer would have approached the other crofter, the procedure would still have gone through, but with another name behind it. Therein lies some of the difficulty: despite what seemed to be substantial objection to the development, it went through. The commission's hands were tied because the planning application had been granted.

This is an issue that has to be looked at. Everything seems to hinge on a case in the Scottish Land Court, which takes its lead from something called the public interest. When I read documents on agriculture policy in Scotland, I find that crofting seems to be a bit of a throwaway—there is not a clear emphasis that crofting is primarily an agricultural pursuit. If it is accepted that crofting is primarily an agricultural pursuit, crofting land should be designated as agricultural land, so that when cases such as Taynuilt come along the council is able to take its lead from the fact that the nation or the community has expressed a desire for the land to remain agricultural land.

In such circumstances, the council has some authority for saying no to a development. It may be challenged by the Scottish Executive or others, but at least the matter will have been brought to light and a direction on the subject can be produced by way of an act of Parliament, ministerial order or other procedure.

Taynuilt is not the first case of this sort. The very first case I handled when I was at the Scottish Crofters Union was exactly the same. We pushed it back and the decrofting did not go through. I do not remember whether no application had been made or whether planning permission had been given, but I always thought after that that it was understood that decrofting of a whole croft is a

very serious issue because it alters the structure of crofting in an area. The proposal that I challenged was in the centre of a township.

We have to be a bit brave on these issues and fire at them quite hard. The message will not get through merely by sitting in committees and so on—important though they are. We have to raise the profile of these cases quite substantially and hit the press with them. We also have to get it right into the centre of understanding at the Scottish Executive that this is not what we want.

14:30

Duncan Baird: I agree with much of what John MacKintosh said. I hope that the Crofters Commission will embrace the fact that if it had engaged positively in consultation at the local plan stage, the situation in Taynuilt would never have arisen. I hope that the commission has learned the lesson that it must engage positively with planning departments on all such occasions. In the Taynuilt case, the council's planning department was simply unaware that the land in question was croft land. That is why the situation arose.

Mr Brocklebank: I do not want to put words into the commission's mouth, but the version that it gave us is that if, in such a situation, it came down with a decision in favour of land being retained as a croft, the likelihood is that that would be overturned in the Scottish Land Court in any case. It seemed to suggest that the necessary powers do not exist.

Duncan Baird: If a proposal gets planning permission, the commission's hands are tied, if I can use that phrase. My point is that if the commission had addressed the situation in Taynuilt at the local plan stage by saying that it wanted the land in question to be preserved as croft land, the planning department would have taken that into account as part of the planning process and the area would never have been available for development in the local plan. The fact that the commission did not do that is what brought the situation about—that is why planning permission was applied for in the first place.

Mr Brocklebank: I have a supplementary question about Tiree. I was interested in Donald Macarthur's point that on Tiree, unlike in many other crofting areas, people do not have the option of obtaining additional paid work. You argued that the drafting of the bill does not pay enough attention to the fact that Tiree is different from many crofting areas in the sense that running the croft is the only option. Is that a fair summation of what you said?

Donald Macarthur: Yes, that is a point that I want to make. Tiree is probably one of the last places left on the west coast where the majority of

crofters are full time. They do not have any means of support apart from their crofts. It concerns me to hear about the proposal to introduce in the bill the concept of a proper occupier. Under that proposal, someone who owns more than four crofts will lose their status as a proper occupier unless they relet some of them. I have eight crofts, a few sublet crofts and a farm. It is infringing a person's human rights to take off them crofts that are kept in good agricultural and environmental condition and to give them to someone else, who in all likelihood will have sold a house in Cheshire for £500,000 to move to Tiree. That is just not on.

Elaine Smith (Coatbridge and Chryston) (Lab): I have a general question and some specific ones about submissions but, before I ask them, I will pick up an issue that arose during Ted Brocklebank's questioning of Duncan Baird. How could the Crofters Commission be more involved in the planning process? Should it be a statutory consultee, for example?

Duncan Baird: Yes, that is an absolute must.

Elaine Smith: I just wanted to get that on the record.

Let us discuss the market. The bill is supposed to support and encourage crofting; in other words, it is meant to be advantageous to crofting. Unfortunately, to date, concerns have been expressed to us—by witnesses and in submissions—that the bill might further open up crofts to the market. In her written submission, Agnes Leask said:

"The perception from crofting communities is that the Bill in its present form will destroy crofting."

That is quite a strong sentence to include in a submission. I think it was Duncan Baird who said that that is already happening to an extent because of some of the prices for which croft houses are being sold.

Are you concerned that the bill could lead to further marketisation? If you are, how do you think it would do that? That question is for all the witnesses.

Duncan Baird: I do not think that the bill will necessarily accelerate a process that, as I emphasised in my submission, is already happening. The issue has been commented on heavily in previous committee meetings. In my view, the bill simply formalises what everyone knows has been happening for a long time. I passionately think that we have a big problem. If the bill could deliver something that would resolve it, that would be quite an achievement.

Elaine Smith: Can you give us an example of what you would suggest? Perhaps you could write to the committee with suggestions.

Duncan Baird: I gave the committee a suggestion in my written submission. The obvious issue is crofters having the right to buy. One would expect anything that was put forward to meet with considerable resistance. I do not accuse or blame anybody for that, as a croft is now a sizeable financial asset. To expect people to vote to do away with a sizeable asset is a big ask; nonetheless, that is where we are now, and something has to be done. The right to buy was inserted into the Crofting Reform (Scotland) Act 1976 for good reasons; however, times have moved on and we have evolved. Crofts are now simply way beyond the means of local young people.

Elaine Smith: What were the good reasons for introducing the right to buy?

Duncan Baird: It was included in the 1976 act to give croft tenants more power, and it has empowered them in their relationship with their landlords—there is no question about that. In taking any future steps, we must remember that backdrop and why the right to buy was introduced. It is not an easy issue, and I do not have a magic-wand solution. However, I have suggested that the Crofters Commission might, in approving non-family assignments, insist that those assignments have the right to buy taken out of them.

Elaine Smith: Does anybody else have a view on that?

John MacKintosh: I live in Lochaber, and I deliberately remained quiet during the discussion about Argyll. We have been concerned about the price of property—not just croft land—for a considerable time, and I am not convinced that it is entirely due to the demand for crofts. As has been suggested, there is a demand for housing as well, and if somebody can get a croft, they have got a house site. The Executive must somehow sort out the housing question, which will ease some of the problem, and it must ensure that new crofts are developed.

We need new crofts, people want new crofts and there is a huge interest in growing food for the local market; however, there is a limited supply of crofts. I think that it was the Crofters (Scotland) Act 1961 that stopped the creation of new crofts. If mechanisms can be found for creating new crofts or similar holdings, that will ease the demand for crofts. Also, if there is a house on a croft and the crofter is thinking of moving to another place to continue his crofting or agricultural activity, a replacement must somehow be found who is genuinely interested in crofting, not someone who can open a cheque book and do what they like.

The problem with the bill is that those who are rich can afford to pay for expensive lawyers and will find a way through the bill somewhere. That

was done, along with various other things, to mask the sale value of certain types of housing way back in the 1940s and has been done in other instances to avoid stamp duty and so on. There are ways round legislation. However, if conditions are placed on the person who is coming into the croft—conditions that will be firmly in place for five to 10 years—and they are regulated rigorously, people will find better places to put their money. The market for croft land will not be open and free and there will be the possibility of genuine transfer at a reasonable croft value. It should be remembered that the crofter created the croft; no one else did. He is, therefore, entitled to the worth of his work.

The Convener: Do the other witnesses agree with those comments?

Donald Macarthur: Reading through Duncan Baird's proposals, I noticed that one of them is for a development scheme or probationary period of five years for entrants to crofting. That seems quite a good idea, as it would ensure that the people who got the croft actually worked it. It would also make crofts more attractive to locals. People would not try to get a croft purely in order to build a house on it, as they would not be able to secure the tenancy or buy the croft for five years and would stand to lose if they did not get the tenancy after those five years. A probationary period or five-year development scheme seems to be another way of making tenancies easier for local young crofters to get.

Elaine Smith: I have a specific question for Donald Linton. Your submission says that you welcome the concept of proper occupier. Is such a concept absolutely necessary, or should the power of veto come into play? How do you feel such powers are being used—or not used?

Donald Linton: I am a wee bit confused about the proposal, to tell you the truth. I think that a proper occupier would have up to eight crofts. If a person is left crofts by relations, he could accumulate 10 or 12 crofts. Why should he be penalised because he has been left crofts in a will? The history of crofting is changing. In the 1950s, someone could get a croft for nothing. Croft real estate now is worth money, which is sad. That is why the developers are coming into our area.

Elaine Smith: So, you are not quite clear about the proper occupier issue yet.

Donald Linton: Not yet.

The Convener: I think that we have agreed that, given the lateness of the submission of the idea of the proper occupier to our consideration of the bill, the committee will have to think about that before we pull together our stage 1 recommendations. Not everybody has had the chance to think

through all the implications of it. We are trying to get initial thoughts on it as we go along, and this will not be people's last opportunity to give us a view.

Elaine Smith: I want to ask Duncan Baird about the economic status test, which is mentioned in his submission. You say that the test

"should be applied to all crofters, including croft tenants."

We talked about the free market earlier. Was the reason for not including croft tenants in the test to do with the need to dampen down the market and make it more attractive to be a tenant than to exercise the right to buy? Tenants might have more grant assistance available to them. Would it help to include croft tenants in the economic status test?

Duncan Baird: I made specific reference to that in my written submission because I am aware of a lot of abuse of the present situation. Croft tenants have an automatic right to all the croft agricultural grants—a millionaire croft tenant would still be eligible for all the grants—whereas owner-occupiers have to go through an income test process. That seems inequitable. It would not be a difficult step to make everybody go through the test. In no way do I want any croft tenant who genuinely needs grants to do without them—far from it. I would like the money that is available to be divided among those who have most need.

Elaine Smith: Does the test not help to dampen down the market in crofts?

Duncan Baird: No, I would not say so. The test was introduced with good intentions, but it is easy for people to get round it and make themselves eligible to be croft tenants.

Elaine Smith: What about the grants for housing? Do they come into this at all?

Duncan Baird: Not to the same extent.

Mr Alasdair Morrison (Western Isles) (Lab): I assure Donald Linton that he is not the only person who is confused about the proper occupier concept.

My first question relates to a response that Duncan Baird gave Maureen Macmillan. You cited the example of tenancies on Lismore being sold for £200,000 and said that if the selling of crofts was properly and tightly regulated, that circumstance would not have developed. Is it your view that the rules and regulatory powers to prevent those £200,000 sales already exist in legislation, or should we be addressing the issue in the bill?

14:45

Duncan Baird: That is a difficult question. Any market intervention that affected prices would be problematic and utterly nightmarish. There is certainly no easy answer. The bill needs to address the inflationary pressure on croft prices and try to stop that in any way that it can. One way in which that could be done is by having a properly monitored development plan. No matter what is put in place, however, it is absolutely key that there is a follow-up and that the bill is seen to be being adhered to once it is in place. If that does not happen, nothing that we do will have any effect.

Mr Morrison: Do other members of the panel believe that the powers that already exist could have been used to prevent the sale of £200,000 crofts? My view is that that should have been prevented, although I am not exactly impartial.

Donald Macarthur: Were the two crofts on Lismore bare-land crofts, or did they have a house on them?

Duncan Baird: Both of them had houses on them.

Donald Macarthur: That would partly explain the £200,000 price, given the price of a house these days. There are houses in Tiree that are going for £160,000 or £180,000.

John MacKintosh: We are getting a lot of anecdotal information, but we need hard information. It is in our interest that a good crofting policy is developed. People are trying to make recommendations on a bill yet there seems to be a paucity of hard information. A long time ago, I was involved in policy work. Before we started that work, we sought objective information.

If a croft in Lochaber had a house on it, you would be lucky to get a sniff at it with £200,000. Most of the houses in the area certainly cost £200,000. In my area, a mid-terrace council house with a small garden and no garage is going for offers over £130,000. People have to keep things in perspective. The question is, what are we trying to do with crofting? That is the area about which I am confused. Is crofting a system that is designed to keep local people in the local area by giving them jobs, or is it simply a system of small-scale, community agriculture with housing attached? I do not have a clear steer on that. There needs to be a debate about exactly what we are trying to do and what exactly the link is between crofting and wider-scale agriculture in the country. At some stage, we could say that £100,000 for a croft from which a crofter can make £10,000 a year is reasonable. At the present time, however, no one can make £10,000 from a croft without putting a serious amount of capital into it, which most people do not have.

Mr Morrison: On the theme of a viable future for crofting, I am sure that most people on the panel are familiar with the Executive's *iomairt aig an oir*, or initiative at the edge. The philosophy that underpins the initiative is that, rather than having six, eight, nine or 10 Government agencies presiding over decline, they should be asked to work to a commonly agreed strategy. Is that something that would be relevant to this part of the crofting counties? If so, in what way?

Duncan Baird: There is no doubt that, in this area—especially in Colonsay and so on—the initiative at the edge took a long time to bed in. However, the joint-agency thinking behind it is good and, eventually, it started to deliver results. It would be a good idea to continue that way of thinking. On Jura, the initiative at the edge has helped to concentrate minds and ease the process of development.

John MacKintosh: I come from a part of Lochaber where there has never been any such initiative. This is where we struggle. We are up against a town, where houses are expensive, and we do not have a direction, such as that provided by the initiative at the edge or by an island development programme, an agricultural development programme or whatever. Therefore, we consider our situation as pure crofting, with just the usual crofting grants and subsidies. We now have access to the rural stewardship scheme, but we do not have any of the other special measures. In our area, the problem is that crofting is in danger of fragmenting and young people will walk away from it. That would be a great pity, because we have a major market for crofting produce sitting right on our doorstep.

Mr Morrison: What would prevent that fragmentation? Would it be the *iomairt aig an oir* philosophy, whereby, rather than head off in different directions—although there may be legitimate purposes and reasons for their doing so—representatives of each and every public housing, economic development and environmental agency sit down of an afternoon and decide on a proper, commonly agreed strategy?

John MacKintosh: If I understand the initiative at the edge properly, it covers more than just crofting. Is that correct?

Mr Morrison: Yes.

John MacKintosh: In my opening remarks, I suggested that crofting support should somehow be consolidated for crofting, with crofting given a direction such that we understand where it is going. To me, that would be more important than a bill. We need a policy for crofting at this stage, and we could then address the weaknesses in the

Crofters (Scotland) Act 1993 and fill in the gaps using a bill such as the bill before us.

If I may, I will go off that subject slightly. One of the problems is that, although we are considering major and serious issues in crofting today, it will take roughly five years for the bill's provisions to bed in—even if it is passed by the Parliament this year—by the time that the lawyers consider it, individuals come to understand it and cases go through. That is what people are saying. In effect, the bill will reach the peak of its influence perhaps 15 years from now. We really have to start to consider what crofting is going to involve in 15 years' time.

We have several challenges. There is the challenge of the culture of the area. There is the challenge of open globalisation in the food market. There is the danger of losing young people, as the education system is all about training them to go into industry, rather than training them to stay here. We need a bill that is framed in terms of what the vision for crofting will be 15 years from now. We should have a bill that will become an act that will help us to achieve that.

The Convener: That is certainly something for us to think about.

Richard Lochhead: I wish to pick up on that last point. The future of crofting relates to the future of our young people, as John MacKintosh said. I want to delve a wee bit more into the situation of young people who want to go into crofting. I think that Donald Linton said that there was a high demand for new entrants—primarily people aged between 25 and 35.

I am trying to get a picture of the demand by young people to stay in crofting. Are we talking about both men and women? Are we talking about youngsters who, because they cannot get into crofting, leave their local communities and go somewhere else, whether in Scotland or beyond? Are we talking about people who want to become full-time crofters or people who would prefer to be part-time crofters? Can any of you give me more detail on the young people whom we are discussing and on what exactly is happening to people who cannot get into crofting but who want to? Perhaps Donald Linton could start by elaborating the point about the 25 to 35 age group.

Donald Linton: A lot of crofters' children—I say "children", as girls are also going into crofting now—are desperate to get into crofting, but they cannot. As another witness said, the crofter has to live and keep the croft going until he is about 80 to keep his pension going, as the old-age pension does not pay enough. I do not know how this could be done, but there is a need for housing for old people in the community where they have lived, so that the young ones—the children—can get on to

their crofts. We need cheap housing for old people, because at present, crofters cannot afford to buy a house away from the croft.

There are no agencies that try to get work into islands such as Lismore, Mull, Islay and Tiree, which is an issue that I am involved in. You boys should be trying to get work into the islands, because then people would stay. At present, people have to go away from the islands to make a living.

Duncan Baird: Richard Lochhead asked whether people expect to have full or part-time employment on their croft. My impression is that people on the Argyll mainland now accept that their employment on the croft will not be full time and that they will combine crofting with their occupation. That arrangement can deliver many things—it can satisfy people's passion for crofting and working the croft and it can provide a healthy lifestyle and a good place to bring up children. Plus, of course, people can get a house on the croft. In general, it is accepted that crofting cannot be people's full-time occupation.

The Convener: Does Donald Macarthur want to comment? He said earlier that the expectation is that crofting will be full time, or that it needs to be on Tiree, if crofters are to make money.

Donald Macarthur: At present, crofters on Tiree are full time, but I cannot see that lasting. I reckon that, within the next 10 or 15 years, there will be hardly any full-time crofters left on Tiree. Full-time crofting is on the way out, as it is no longer a viable option. To maintain the population on islands such as Tiree, crofting must be viable, because if crofting deteriorates, the tourism industry will deteriorate and garages, shops, aeroplanes and ferries will go. The place will no longer be an attractive place to live, so the population will fall rapidly. Crofting is the mainstay of islands such as Tiree.

Mr Lochhead mentioned affordable housing. The croft house grant scheme can provide about £28,000, but building a house on Tiree costs about £100,000 or £110,000. As Donald Linton said, one of the greatest debarments to people going into crofting is that they do not have a house. When I took over my father's croft, my father and mother were in the croft house. When I got married, my wife and I and our two kids lived in a caravan for eight years because we could not afford to buy a house. We need affordable housing for young people who want to go into crofting, otherwise they will not stay around and I cannot blame them for that.

John MacKintosh: It is important to have other jobs for crofters, but they must be compatible with crofting. About 50 years ago, the Forestry Commission was an excellent employer in that

regard, because it arranged time off for crofters to do seasonal jobs on the croft. The industry was therefore compatible with crofting. The new industries that have come in, such as fish farming, and which were at first compatible with crofting have in recent years reduced the number of employees substantially and, more important, are now under more pressure, which means that the remaining employees are expected to work longer hours. A crofter cannot do that; they must have reasonable time off.

One advantage of crofting that we have not considered closely is that it is a healthy occupation if it is done without pressure. If a person crofts because they like animals or growing plants, it can make a major contribution to their health. If only for that reason, I would like many more people to be involved in crofting. However, I fear that crofting will come under greater pressure because agricultural prices are flatlining—I think that that is the word used in posher financial circles. The fact that incomes from jobs outside crofting are going up creates pressure. People must decide what they will focus on to keep their family going and to keep up their income.

On the question of mobility, I am sure that a young person could work my croft better than I work it, because when my parents were younger, they worked it better than I do now. However, I would have difficulty finding another croft to go to, because the real market in crofting is small, and there is no real movement among crofters. Somehow, that movement has to be created so that we can move to the places where we want to be and have holdings that are the right size.

At my time of life, I might be better getting out of livestock production and getting into growing potatoes or something similar. I would need a different size of croft for that, because the output per acre would be different. At present, my output per acre might reach hundreds of pounds, but in horticulture, someone can put in an enormous amount of work on a small croft and get an income of £2,500 to £3,000 per acre, which goes back into labour costs. We need to address that issue in creating a crofting policy.

15:00

Nora Radcliffe (Gordon) (LD): A lot of the comments that we have heard relate to whether we should set an upper limit on the number of tenancies that one person can hold, which would be affected by whether someone crofts full time or part time, by regional differences and by differences in the size of crofts. Mr Linton said that there were nine applicants for a croft that became available, but Mr Macarthur said that he needs eight crofts to make a living. I ask the witnesses to comment on whether an upper limit should be set

on the number of tenancies that can be held and on how that would be modulated by the factors that I mentioned.

Donald Linton: Crofting is different now from how it was in the 1950s. We are not allowed to have a milk cow; it is illegal for us to milk our own cow. We cannot sell our eggs; we have to have the buggers stamped—it is unreal. We can give a person an egg, but we cannot sell them it. In the 1950s, everybody had a cow and grew their own potatoes, some of which they sold to local people. That does not happen now, because there are lots of rules and regulations. I do not know whether they are Scottish, English or European rules and regulations.

Duncan Baird: The crofting situation mirrors exactly what has happened in agriculture. Farms have had to get larger simply to remain viable. I do not doubt that that is why people on Tiree need additional crofts so that their farming businesses remain viable. It is not easy to address that problem. Donald Macarthur, who is in business on Tiree, says that he needs additional crofts; I do not doubt that he is correct. Given that, it is difficult for us to say that we should limit the number of tenancies that someone can hold. There is no question about it: the fact that people accumulate croft tenancies, for obvious reasons, stops young people getting started in crofting. It is a catch-22 situation.

If anything, the pressure will increase even more with the biggest change in the agriculture support system in 50 years, which will affect crofting's viability. The committee could do a lot to assist. The less favoured area support scheme, which is one of the main deliverers of money to crofting, is currently under review, the outcome of which is critical to the future of crofting. We now have the single farm payment system. There is no national reserve for young entrants to access. It has always been difficult to start up a farming or crofting business, but the fact that there is no system for young people to access money will be the death knell for crofting.

Nora Radcliffe: We will have to find answers. Should we set an upper limit on the number of tenancies and should there be regional variations, given that there is scope in the bill to provide localised solutions?

Donald Macarthur: The difficulty with the bill is that you are trying to come up with one policy to cover 1 acre crofts in Lewis, 100 acre crofts in Tiree and 1,000 acre crofts in Sutherland. You will have great difficulty getting one policy to cover everything. I am happy to give up some of my croft tenancies if you come up with a substantial fee in the outgoer system. At the moment, that does not exist.

Nora Radcliffe: That is useful for us in considering the best way forward.

John MacKintosh: The issue is not the number of crofts but the size of people's land. The previous panellist talked about 1 acre crofts and 1,000 acre crofts. On support systems, there seems to be great reluctance on the part of the Scottish Executive Environment and Rural Affairs Department to ensure that the smallest producers get a good sum either per unit of input of some sort or per hectare, and then to modulate after that. How can large farmers tell us that they are efficient when they get the same rate per acre as we do? Some of them have received frightening sums with the single farm premium. It is quite embarrassing to be in agriculture when there are single farm premium sums of such size. It suggests that there is not a just distribution of funds in the agricultural industry.

Mr Morrison: My friend Donald Macarthur from Tiree mentioned a substantial sum for the outgoer scheme. How would that relate to the cost of acquiring crofts in the first place?

Donald Macarthur: Under the croft entrant scheme, a new entrant gets about £3,500. The outgoer gets about £2,000, which is not much of an incentive for someone to give up their croft. If they give up the croft they give up the money that they get under the LFAS scheme—formerly the hill cow subsidy scheme—and the payments that they get under the single farm payment on the hectareage on their croft. Substantially more than £2,000 would be needed to create an incentive to give up a croft.

Nora Radcliffe: We are talking about creating new crofts, but should we be talking about creating new crofting townships? Perhaps it is not the case, but it seems that a lot of the ethos of crofting is to do with the fact that you are in a crofting community.

Donald Macarthur: We are fairly lucky in Tiree that we still have our 23 crofting townships, but substantial investment is needed to maintain them.

John MacKintosh: There are advantages and disadvantages. One of the advantages of creating new crofts by adding to an existing township is that the experience of the existing township helps those who come into the new crofts. I do not know whether you would create crofts by expanding townships or by creating new crofts on the better, outby land of townships. You would have to tackle each case on its merits. It requires a bit of imagination. It would certainly help to sustain many a crofting township. In the past, I realised that many townships that I knew contained quite old folk. A substantial number of new crofters then came forward but, I regret to say, some of those who were young then are now looking quite old.

Performance in townships is up and down. If you pick the right time to create new crofts you can develop and help to sustain townships.

Nora Radcliffe: If we are talking about creating crofts outwith the crofting counties, how important is it to make groups of crofts, so that there is a township ethos?

John MacKintosh: I always imagined that that would happen more or less naturally, but perhaps my view of the model that would be created is wrong. I imagine that groups of crofts could be created by subdividing farms that come on the market. That would not need to be constrained by legislation; it could be done through a farming company or co-operative.

Mr Jamie McGrigor (Highlands and Islands) (Con): Mr MacKintosh, your submission states:

"The demand of the SCF to have an elected board on the Crofters Commission ... should be pursued with vigour."

Why would that make a difference, and who would elect that board?

John MacKintosh: To answer the second part of your question first, I imagine that registered crofters would elect the board, but there is also an argument that immediate relatives—or close relatives, or however people are defined—could have a say. It is possible to have a two-tier election system, as happened with marketing boards, for which there were elections of special members, who were elected by the whole population of the industry concerned—the wool market or the milk market, for example—as well as elections of regional members. With such a system, you must have regional representation. Under such a system, questions such as those that have been raised today would go directly to the elected members, and it would be incumbent on them to raise those questions and deal with them or else be deselected the next time round. Committee members probably understand that sort of system.

Mr McGrigor: Most of us do. I have one brief question for the gentleman from Tiree about the value of tenancies being a problem for inheritance and long-term care. Are you suggesting, Mr Macarthur, that you would like crofting tenancies to be zero rated?

Donald Macarthur: I should say that our submission was written by our local NFU Scotland secretary and that I just stepped in two days ago. However, it is iniquitous that, just as people lose their houses to pay for the upkeep of, for example, an uncle in an old folks home, a tenant could lose his or her croft to pay for the upkeep of a previous tenant. That is what Susan Lamont was getting at when she wrote the submission. If a price of £100,000 were put on a croft tenancy, the people

running the old folks home could demand that the croft be sold. That could happen, even if somebody were running the croft in the meantime.

The Convener: That issue has not arisen before, but we might like to think about it. I thank all of you for your evidence. It has been interesting to hear your views on the issues that you think arise from the bill, and we shall reflect on them.

I invite the first panel to stand down and the second panel to come forward.

15:13

Meeting suspended.

15:14

On resuming—

The Convener: The second panel consists of Lorne MacLeod, the director of the Isle of Gigha Heritage Trust, and Ian Gillies, the factor of the Argyll estates on Tiree. I welcome you both.

Mr Morrison: Lorne MacLeod's submission from the Isle of Gigha Heritage Trust is an excellent, positive and upbeat summary of what is going on in Islay. What has been achieved there in recent years is sensational.

My question relates to the last paragraph in the submission, which states that as far as the creation of new crofts is concerned,

"it is an essential pre-requisite that there is an ability for the crofter's right to buy to be removed from the new crofts."

I ask Lorne MacLeod to expand on that comment. Given the positivity in your submission, why is that so important?

Lorne MacLeod (Isle of Gigha Heritage Trust): Looking back four years, it was always intended that one of the farms—a vacant farm—would be held back to create some form of smallholding, involving either economic status or new crofts. After so much effort was put into the buyout, we did not want to lose crofts by people taking up the right to buy newly created ones. The aim was very much to keep the crofts within the ownership of the community body. Obviously, everybody on the island can be involved democratically in the decisions that are made, so they are not disadvantaged in any way.

Mr Morrison: Given your experience of other aspects of economic development across the region, and given that you listened to the previous panel and perhaps read the evidence given by previous panellists, are you concerned that elements of the bill might legitimise or license—I think that was the word used by Duncan Baird—the current market?

Lorne MacLeod: We ask you to consider the parallel with properties on the island. To encourage the population increase that has taken place, the Isle of Gigha Heritage Trust has had to be quite a strong regulatory body. For example, anybody who wishes to buy a plot on the island to build a house either must have been resident on the island or must be coming to take up or create employment on the island. Our intention is to build up the economically active population. At a later date we might open it up a bit more, but we want to avoid the situation that has arisen in Colonsay, where up to 50 per cent of houses are second homes or holiday lets.

The Crofters Commission needs more powerfully to implement its regulatory functions rather than continue with the discretionary approach that it has adopted in the past. There is a concern about the price of tenancies on the open market, which needs to be examined.

Mr Morrison: Have you thought about running night classes for the Crofters Commission on regulation and how to use regulatory powers?

The Convener: I will treat that as a rhetorical question. I know what you are getting at.

Mr Brocklebank: My question follows on from Alasdair Morrison's points. I understand the argument that it is difficult to persuade landlords to make land available for new crofts, given that the current right to buy means that the land could be lost to them. However, given that the right to buy exists elsewhere in the crofting counties, would it not be extremely difficult to enforce its removal and to convince landowners that the land would be held in perpetuity as crofting land and would not ultimately be sold off under the right to buy?

Lorne MacLeod: If the right to buy new crofts is not removed, I cannot see us in Gigha creating crofts. We would look to see some other form of smallholding because of concerns about losing control and what might result from that. On Gigha, we consider crofting to be a positive move. We wish to create crofts, because badging land as crofts is positive and crofting roots people in the community. When the buyout took place, out of a population of 98 there was only one person in their 20s, but we have moved on and we have about 10 people in their 20s.

Crofting catches people to the land. Despite the population growing from 98 to 141 there is no unemployment in Gigha, because people do a variety of jobs. It is a dairy island and dairy farming is a 365-days-a-year job. I know one family in which the husband and wife have not been on holiday together for many years, because they cannot get somebody to help out on their dairy farm. If we have crofters, there will be more opportunities for employment in dairy farming and

more opportunities for small businesses that are looking for employees.

Mr Brocklebank: Do you envisage houses being built on the new crofts? Who would pay for them and why would a bank or a mortgage company want to lend on land that the borrower would never own?

Lorne MacLeod: That is an interesting point. We look to Fyne Homes housing association to provide some affordable housing, plus people on the island have the opportunity to buy plots. We do not necessarily envisage houses being built on the crofts. On a small island that is about 7 miles long, that is not a problem, as there is easy access to the croft land.

Mr Brocklebank: It has been suggested that there should be no right to assign crofts to non-family members. However, other witnesses have suggested that assigning within families can lead to crofts being neglected and that assigning them outwith families brings new blood in.

Lorne MacLeod: You are absolutely right. We cannot have total control over what happens in future, but in a community-owned island where all members of the community have voting rights, there would be peer pressure if people did not look after their crofts and fully work them.

Mr Brocklebank: Does Ian Gillies have any comments on any of the questions that I raised with Lorne MacLeod?

Ian Gillies (Argyll Estates): I subscribe to everything that he said. Argyll estates is a fairly traditional landlord and has rented crofts since the enactment of the crofting acts. I tried to give you a little bit of my background in the paper that I submitted. I have been on Tiree for about 30 years, so I am steeped in the island's crofting background. However, even though Argyll estates is a traditional landlord and it makes its living from crofting, it would not fall over itself to create new crofts. It is difficult to understand the rationale for creating new crofts when they could simply be bought out from under our noses the next day. Measures would have to be put in place to guarantee that the land was kept in crofting in perpetuity and not removed from crofting by some sleight of hand somewhere down the line.

Elaine Smith: In the second-last paragraph of your submission you say that the bill's proposals on the right to buy are

"a legitimisation of the concept of 'croft land for profit'"

and you go on to say:

"It may in fact already be too late, as the seeds of avarice are already sown."

On the first page of your submission you say that, if the bill's proposals were implemented, it would

"encourage rather than inhibit the developing market in crofts and lead to the commercialisation of crofting."

How would that happen?

Ian Gillies: There always has been a market in croft tenancies, but it is on record that the bill will legitimise that market. We can see that already: the Taynuilt case, which has been mentioned today, is a classic example. If the Crofters Commission had intervened earlier in the process—at the planning stage—the outcome in Taynuilt would have been different. The diagnosis is absolutely correct. In the event, the developer made full use of his assets with all the results that we saw.

Elaine Smith: If I may, I will interrupt you at that point. Obviously, that happened without this piece of legislation being in place. My question was, how would the bill make that situation worse? You said that the bill

"will encourage rather than inhibit the developing market in crofts".

Given the Taynuilt situation and the fact that, as you said,

"the seeds of avarice are already sown"

and that there has always been a market to some degree, how would the bill make things worse?

Ian Gillies: Surely the bill would create an expectation that crofts are a marketable commodity?

Elaine Smith: That is what I am asking you: how would it do that?

Ian Gillies: It would do it. I understand that one of the objectives of the bill is for crofters to realise the market value of their crofts.

Elaine Smith: Right, but will the proper occupier provision help to ensure that the right kind of person runs a croft and keeps the land as croft land? My understanding is that the primary aim of the bill is to support and encourage crofting and not to further marketise it.

Ian Gillies: I understand that. We entirely welcome legislation that helps crofting. I am sure that many will be familiar with the old adage of what constitutes a croft, which is that a croft is a small piece of land surrounded by legislation. That is as true today as it ever was; indeed, the situation is becoming worse.

Crofting does not operate in a free market; it operates in a protected one. When we begin to interfere in that market, we run the risk of damaging the very thing that we are trying to protect. That is what the bill will do. A number of agencies, including the Scottish Executive, the European Union—through its common agricultural policy and subsidies—and any number of other

organisations such as those in the enterprise network are trying to support crofting. My point is that, if we make it possible or too easy for entrepreneurs—for want of a better word—to remove crofts from crofting simply for the sake of profit, we will make it extremely difficult for crofts to be replaced.

Elaine Smith: I am not a crofter, but I am not clear which part of the bill will do that.

Ian Gillies: It is one of the main functions of the bill to do that. If I am wrong, I stand to be corrected.

Maureen Macmillan: I have one or two questions for Lorne MacLeod about his vision for what will happen on Gigha with the creation of the new crofts. I take it that the new crofts are not only for people who live on Gigha at the moment. I assume that you hope to attract other people on to the island to work them.

Lorne MacLeod: It is a bit of both. Obviously, we will be very open in inviting people to make submissions. There will be a development plan under which people can sign up for a croft, including people who live on the island. Through our website, we try to encourage people with key trades such as joiners, plumbers and electricians to come to the island; one of them could come up with a proposal.

We discussed earlier the plans for having polytunnels and horticulture as well as stock rearing. The crofts will be worked on a part-time basis; they will not be fully viable on their own. We are looking for people who will have multiple jobs on the island.

Maureen Macmillan: That is very interesting. You will probably operate some sort of points system.

Lorne MacLeod: We would have to do that using a very fair and open scoring system. I believe that that sort of system is being looked into on Colonsay for some of the new crofts that will be created there.

Maureen Macmillan: Does the commission do that anyway or would you do it? How will you and the commission work together on that?

Lorne MacLeod: I believe that Colonsay is slightly ahead of us in looking at a project to create new crofts. People there are working with the commission's local development manager in Argyll to develop a points system.

Maureen Macmillan: Could a points system go some way to stopping the open market in crofts that we have been told exists?

15:30

Lorne MacLeod: I am not sure—I have not thought that through. With new crofts, an open and accepted scoring system might result in fairer allocations that were more defensible in the community. However, I am not sure about the wider application of such a system to crofting throughout the Highlands and Islands.

Maureen Macmillan: Does Ian Gillies have a view on the use of a scoring or points system?

Ian Gillies: I thought about that when the issue was discussed with the first panel. There seem to be different ideas in different areas. Donald Macarthur made the point that crofts can range in size from 1 acre to, in Caithness and Sutherland, 1,000 acres or more, mainly of moorland and rocks. It would probably be wrong to limit a person on Tiree or in Sutherland and Caithness to a certain number of crofts. We need a more technical way of arriving at the appropriate amount of land for people to carry out their business. Is that what you asked about?

Maureen Macmillan: No; I was thinking about the type of person who might be given a crofting tenancy. Lorne MacLeod talked about attracting joiners, carpenters or plumbers to Gigha, which would require a kind of checklist. Could a checklist or points system be applied in other crofting communities when crofts are put on the market, for want of a better term?

Ian Gillies: That is a good idea that would give a technical basis for decisions. However, in the time that I have been on Tiree, only five crofts have become vacant for general relet. Crofts are cherished and are not readily put on the market. Anything that would encourage turnover in crofts would be great. At present, although there are family assignments and other assignments outwith the family, the turnover of crofts on the open market is so small as to be almost negligible.

Maureen Macmillan: One problem that has been mentioned is that older crofters cannot find a way out, to allow younger crofters to come in. Is that a problem on Tiree?

Ian Gillies: I think so, because the age profile of crofters seems to be rising. As I said, it is extremely difficult to obtain a croft, because tenancies do not often come on the market. Therefore, young people seldom get a chance to enter the market and get a tenancy. Previous suggestions for an outgoers scheme and an effective pension for outgoing crofters through the common agricultural policy were not supported by the United Kingdom Government, although the scheme is supported elsewhere in Europe. I do not know whether the Executive could take on such a scheme, but it would certainly be beneficial.

Maureen Macmillan: I do not know that either, but maybe we can find out.

Dave Petrie (Highlands and Islands) (Con): I am fairly new to the job, so I am interested in Ian Gillies's comments, in his role as local councillor, on the Taynuilt situation, given that Argyll and Bute Council draws up the local plans. Could crofters be protected if we avoided including crofts in local plans?

Ian Gillies: Yes, that could be done. There is no question but that had there been earlier involvement on the issues, the eventual outcome at Taynuilt would not have been as it was. There is a community planning forum and we had the formal consultation period on the local plan, during which representations could have been made on the Taynuilt case. However, to be frank, I was not aware of an active crofting community in Taynuilt until the headlines started hitting the newspapers—that came as a surprise to me. There is no question but that the situation was used to advantage in Taynuilt. I am not sure whether anything could have been done about it without earlier involvement of the Crofters Commission.

Dave Petrie: Is there much consultation with the Crofters Commission when the local plan is being formed?

Ian Gillies: There does not seem to be a great deal of consultation with the Crofters Commission when we have relevant applications on croft land before us. It has been suggested that the Crofters Commission should be a statutory consultee, as it is the Government's adviser on crofting. That would be a positive and welcome move, along with a stiffening up of the commission's existing powers.

Rob Gibson: I want to continue in that vein for a moment. The need to get things right in area policies has been discussed quite a lot. It is obvious that Gigha has its own community policy for its area. What sort of crofting area policy is there at present? Do crofters on Tiree have a stated view of how they want to see things in a plan of any sort?

Ian Gillies: I do not think that we have a formal document such as that. It is true that crofting communities are perhaps not their own best advocates when it comes to saying what they want. Your question is therefore a pertinent one.

We are making a start in areas such as Colonsay, which has just gone through the initiative at the edge, and Jura and Coll, which are just starting the initiative at the edge. Tiree is just finishing a three-year programme that is very much in the vein of the initiative at the edge and which involves all the agencies. Anything that we could do to outline what crofters see as the way

forward for the future of crofting would be extremely welcome. I am not convinced that we have that at the moment.

Rob Gibson: It concerns me that there is no means to articulate any such views, far less draw them up into plans. There will be a township view, but I believe that there are 23 townships on Tiree—is that correct?

Ian Gillies: Yes.

Rob Gibson: Their views must be aggregated into something that would allow you to articulate them in the local plan. Argyll and Bute Council's submission states robustly that any proposed changes must fit with what the local plan says but, frankly, I see it the other way round. You will know better what is needed for the area than the planners who come in and tell you what they think should happen. The people on Gigha, who have a plan for their area, must feel the same.

Ian Gillies: What you say is correct. For us to map a way forward, we have to become more involved. We should not allow planners to dictate the direction or shape of our communities; we should take a more proactive view of that. At the moment, however, there is no formalisation of crofters' views in any of the crofting counties, as far as I am aware.

Rob Gibson: So that is something that we should consider. On Gigha, you had to deal with the issue of dairy farms being bought out by the community. I would like Lorne MacLeod to take us through that, as it is quite important to thinking about how crofts might be set up and regulated.

Lorne MacLeod: Historically, the island has always been used for dairy farming, as the rich farmland on Gigha is of the same quality as that in Ayrshire. When the community buyout took place, there was always the likelihood that we would lose the Campbeltown creamery and the milk wagon coming over every day, which would jeopardise dairying on the island.

We did an agricultural restructuring on the island to make those dairy farms larger so that they would be more viable. It was unfortunate in many ways, but at the time of the buyout, there were a couple of vacant farms and they were brought into play to allow additional pastures to be given to farmers. As part of our overall plan, it was very much the original idea of all the islanders to have smallholdings of some kind. The islanders would have preferred those smallholdings to be crofts but, at that stage, we did not know the proposed terms of the bill. Now that we see those terms—we hope that there will be a right to waive the right to buy—we want the crofts on Gigha to be part of that because it is important to allow people to undertake various occupations on the island and

not necessarily get their full income from agriculture.

Rob Gibson: Did you have to keep the dairy farms as tenancies or did you sell any of them?

Lorne MacLeod: No. One farm was not let, so we let it on the basis of the new form of tenancy, the name of which escapes me at the moment. As you probably know, dairying is not very profitable at the moment. The tenant is a young person with a young family so, to encourage him, we gave him a stepped-up rent. He will not move to paying a full rent for about three years.

Rob Gibson: I am asking the question because housing is important to any kind of agricultural worker.

You have outlined the potential for new crofts and you are looking to the housing associations to provide housing. Where will the land come from for the housing association houses that will allow the crofts to be worked?

Lorne MacLeod: In our case, we set aside land that would be used for housing. Our master plan was adopted by Argyll and Bute Council in its local plan. It was a community-led approach.

Some of the public sector landowners, such as the Forestry Commission Scotland, Scottish Natural Heritage and SEERAD itself, all of which own large portions of land throughout the Highlands and Islands, can consider not only the creation of new crofts but perhaps the set-aside of land.

Rob Gibson: So you have land, but Ian Gillies shook his head over finding land for housing on Tiree.

Ian Gillies: Yes; you have hit the nub of the problem. Affordable housing is one thing, but when people talk about it, they quickly realise that it is wrapped up with the availability of land. In the case of Argyll estates, land could be made available. There are five farms on the island, all of which are on full agricultural tenancies. In years to come, if those farms became vacant—which is much more of a possibility than a croft becoming vacant—we could subdivide them into smallholdings or small crofts. That would obviously give the incoming tenants the opportunity to make use of the crofters building grants and loans scheme. However, as Lorne MacLeod said, legislation would have to be in place to ensure some belief that the estate would continue to have some control over that land.

Mr Ruskell: Following on from that, I note that you said earlier:

“a croft is a small piece of land surrounded by legislation.”

What was the thinking in Gigha about the need to set up new crofts? Are people on Gigha saying that they want small parcels of land, or are they saying that they want crofts and a croft tenure system? The community is the landlord, so it can decide what type of private ownership of land or renting of larger-scale dairy farms, smallholdings or crofts is made available. Why choose an historical model based on crofting?

15:45

Lorne MacLeod: It has always been our preferred route to move forward with crofting, with the provisos that will be included in the bill, obviously. The reason why we wanted crofting on the island is that not a lot of fruit, vegetables and so on are grown on the island, although the climate is temperate enough. There are opportunities for the sort of polytunnel developments that there are on other islands. Crofters on Skye operate large greenhouses in which they grow strawberries, for example. There are various forms of diversification. Some people are interested in cheese production, running a small-scale smokehouse, growing specialist trees in a tree nursery and so on. Those sort of areas are possible new uses for the smallholdings and crofts. I do not think that there will be a shortage of people with ideas; the trouble might be that we might have land for only six crofts, for example. That would mean that the supply would be limited, which comes back to what Maureen Macmillan was saying about a points scheme.

Mr Ruskell: I understand the linkage between crofting, the working of the land and the production of food. However, why go for a crofting model of tenure? Why not go for some form of rental agreement that would enable you to say to someone who was renting a piece of land in Gigha, for example, that they have to take on a particular enterprise, such as horticulture. In some ways, that would enable you to be more specific.

Lorne MacLeod: One of the issues is the length of the tenure period. One of the advantages of the system of crofting that we are advocating, with assignation within families allowed, is that people would be able to put up buildings on the land. For example, if someone came forward with a cheese-making proposal, they would have to put up a small unit. Obviously, that would require quite a bit of investment and they would probably try to secure grant support, which they would get only if they had a lengthy form of tenure. However, if we were to give them some sort of grazing let, that would give them only 364 days, which would not be sufficient to allow the development of that land. Obviously, we want to give people some sort of security of tenure.

Mr Ruskell: What would happen if, after someone took on a croft, they decided that they did not want to go into cheese making any more and were simply going to stick a pony in the field and keep the land in good agricultural condition that way? What kind of influence could the community have in that situation?

Lorne MacLeod: Hopefully, with new crofts, we will be able to enter into a tenancy arrangement that would include certain conditions to deal with such a situation. We appreciate that we cannot control every eventuality. However, we want to look to the best-possible scenario. The opportunities for the new crofts certainly look to us to be the best opportunity available.

Nora Radcliffe: I would like to hear a wee bit more about why you think that there should not be a right to assign to non-family members. Some of the other evidence that we have had suggests that it is assigning within families—to absent family members—that has created some of the underuse and absenteeism.

Lorne MacLeod: That is a fair point. The greatest influence on our board when we were discussing the matter was the situation on neighbouring islands, where people are buying second homes and holiday homes. We want to avoid that and felt that, with families who are based on the island, peer pressure and influence would come into play and help to ensure that people would be actively involved in crofting.

Nora Radcliffe: In a scenario in which someone who is a child now goes to university and gets a job in Glasgow, would you foresee them returning to the island when they get a tenancy assigned to them?

Lorne MacLeod: Well, that is the question. However, a large proportion of the people who make up the increase in our population, which has gone from 98 to 141, are returnees. As has been demonstrated up and down the Highlands and Islands, crofting roots people in an area. You just need to look to Tiree, which has a population of 700, for evidence of that. The fact that it has been able to sustain that level of population is because it is a crofting community.

Nora Radcliffe: That is the intention behind the crofting system in the first place, is it not?

Lorne MacLeod: Exactly.

The Convener: Thanks for giving us a detailed perspective and also for providing a big-picture view of the bill. This session has been useful.

We are running slightly late. I must not let us run too late, as that might have implications for the Parliament's business tomorrow. However, we will have a break for 10 minutes to let people get a coffee.

People who are in the audience but who are not on one of the later panels and who want to express their views about the bill and tell us about any experiences that they have had that they think are relevant to our deliberations should speak to one of the Parliament's staff during the break. Once we come back from having coffee, we will ask them to come to the table to make a brief statement, which will become part of our record of the meeting and form part of our evidence.

15:51

Meeting suspended.

16:26

On resuming—

The Convener: I welcome our third panel of witnesses. We invited the three of you because you all represent organisations that are involved in the management of crofting land, in particular environmental objectives, which are one of the issues that we are particularly interested in. I welcome Iain Turnbull, property manager of the Balmacara estate for the National Trust for Scotland; Ross Lilley, Scottish Natural Heritage area officer for Mull, Coll and Tiree; and Nigel Hawkins, director of the John Muir Trust. I am grateful to you all for coming here this afternoon and for giving us your written submissions in advance.

Mr Brocklebank: My first question is for Iain Turnbull—it is nice to see you again, Iain. When I read your submission, the journalist's heart in me leapt, as you seemed to be totally scathing about all aspects of the bill, which I found very interesting. I want to ask you about the vision. Why do you think that the bill fails to represent the vision of what crofting should be about?

Iain Turnbull (National Trust for Scotland): The bill has some vision by way of objectives, but the text does not appear to address any of them. There does not appear to be any clear idea of what crofting should be delivering for society, for communities, for the environment and so on. No one seems to have thought it through. If they have, it has not been articulated in the bill.

The feeling of the National Trust for Scotland—and it seems that we are not alone in thinking this—is that there needs to be a more rigorous attempt to understand what we want from crofting before we legislate for it. It is clear from reading through the bill that much of the stuff that it is trying to address could be addressed under the existing legislation if there was proper regulation. We heard a succinct example of that from Alan MacIntyre in the informal session.

On the Balmacara estate, we currently have a case in which better regulation might have made a difference. An absentee is seeking to acquire a croft, despite our objection years ago to their succeeding to the croft. Such things could be addressed under the existing legislation—it would not need to be changed a great deal for such circumstances to be dealt with. It seems like someone has been tinkering at the edges, rather than trying to establish a genuine strategy for the future of crofting. We should be asking what we want from it and what we want it to deliver, rather than assuming that having everything on the free market is the right way forward.

16:30

Mr Brocklebank: One of the things that makes the National Trust for Scotland different from other landlords is that your tenants do not have the right to buy. Am I right in that respect?

Iain Turnbull: No, you are not correct.

Mr Brocklebank: Perhaps you can explain that to me. When giving evidence last week, Sir Crispin Agnew was citing the National Trust as being an example for how other trusts should act in this respect.

Iain Turnbull: The existing legislation makes special provision for National Trust for Scotland land that is held inalienably for the benefit of the nation, which I think applies in all six of our crofting estates. Basically, if a crofter applies to acquire their croft under the legislation, but the trust decides that it does not want to go with the application and the case ends up going to the Scottish Land Court for an order in favour of the acquisition, the Land Court must take into account the purposes of the trust. The legislation does not say at any point that the Land Court must say no to the acquisition. In fact, there was a Land Court case last year in which the Land Court's clear opinion was that there were no grounds for not selling the ground in question, but we could apply conservation burdens under the Title Conditions (Scotland) Act 2003—which we have done—as long as we did not erode the crofters' rights as tenants. In other words, we could not restrict what they could do as tenants. Therefore, Sir Crispin Agnew is not quite right, although it is more likely that what he said has not been interpreted properly.

Mr Brocklebank: That is probably more accurate.

Iain Turnbull: I suspect that it is because he knows more about such things than most of us.

The Convener: I remind you that what you say will appear in the *Official Report*.

Iain Turnbull: I am pretty sure about what I have said.

The right to buy is not prohibited, but there is a special case if the land is inalienably held for the benefit of the nation. I fully agree with Sir Crispin Agnew about what is reasonable where land is held for communities and other charitable purposes. The approach makes sense where there is a wider interest in the land.

Mr Brocklebank: Perhaps Nigel Hawkins of the John Muir Trust wants to comment on the matter. Sir Crispin Agnew said that organisations such as the John Muir Trust should possibly follow the same route as the National Trust for Scotland, because it gives extra protections in deciding whether people have the right to buy. I hope that I am not misrepresenting what he said.

Nigel Hawkins (John Muir Trust): That is not really the view of the John Muir Trust. We are committed to working with local communities, including the crofting communities, and we want to see strong and sustainable crofting communities. Basically, we co-operate with local people. We listen to what they say about what they want and we welcome local people wanting to exercise their right to buy.

We welcome the provision of the Land Reform (Scotland) Act 2003 that gives communities, including crofting communities, the right to buy estates—in fact, crofting communities have the absolute right to do so. The John Muir Trust owns four estates on which there are significant crofting communities—indeed, there is a small crofting involvement on a fifth estate. Long before land reform was proposed, we always said to crofters that if they wished to buy those estates, we would help them to do so. We like the idea that we must continue to prove to our crofting tenants that we are good landlords of crofting estates—doing so keeps us on our mettle. Therefore, we are reasonably happy with the situation as it is. We do not have the inalienability issue that the National Trust has.

The one issue that causes us problems is that when land is bought with funding support from funders such as the National Heritage Memorial Fund, conditions to do with selling land on are often attached. They will accept the crofters' statutory right to buy, but we have only recently been able to agree a protocol with them on other land that may be for housing or other purposes so that land can properly be sold to meet the need for affordable housing, particularly in the Highlands and Islands. We take a low-level and low-key approach of discussion and agreement.

Richard Lochhead: I have two questions, the first of which is a general question. I do not know whether the representatives of the National Trust

for Scotland and the John Muir Trust are speaking about the specific geographical areas that they represent or their wider organisations, but I presume that both organisations own land outwith the crofting counties. There is a debate about whether crofts should be created outwith the crofting counties. Would your organisations be amenable to that happening? Is there any demand for it?

Nigel Hawkins: I think that there is. As our submission says, we certainly support extending what has been proposed beyond the crofting counties.

I am anxious not to give the impression that I am speaking on behalf of all of the John Muir Trust's estates, because there are different communities with different views. Our approach of working individually with each estate is quite unusual. I would not dare to give the views of the crofters on each of the estates in which the John Muir Trust is involved, as that is not how the trust works. We very much work in co-operation with the crofters.

Iain Turnbull: Obviously, we own land outwith the crofting counties. The most obvious place might be Arran, where we own Brodick and Goat Fell. Arran has been mentioned in the past in the context of new crofts. I am not aware of any approaches to the trust; I am not even sure whether there is suitable land, because I do not know the property, although I suspect that Goat Fell could be dubious. Therefore, I cannot really comment. However, new crofts have been created at Balmacara, so there is no obvious reason why we would be philosophically opposed to crofts at Goat Fell, as long as it was the right thing for that location and there was widespread community support.

Richard Lochhead: My second question is also specific to the National Trust. Your submission says:

"We do *not* support the proposed explicit designation of energy generation as a reasonable purpose under an application to resume croft land."

The next panel of witnesses includes representatives from the Scottish Renewables Forum, so there is an interesting debate to be had. Will you elaborate on why you said that and what you mean? Have you had bad experiences in your areas?

Iain Turnbull: Our concern is where the motivation for that comes from. As we said in our submission, the current list of uses is not an explicit, definitive list. There are other reasonable purposes that are not stated specifically in the bill. As things stand, renewable energy production would be one of those. Our experience is that many things can be done on croft land and that, where there is a will, land can be resumed. Given

the sensitivities about wind energy generation, there should not necessarily be preferential treatment for that industry. Many other planning consents and so on need to be gone through. Any mention of energy generation in the bill could lend credence to applications and give them favourable status. Basically, that is our argument. Many other developing industries could argue equally that they should be listed as reasonable purposes.

Richard Lochhead: There is a lot more to renewables than wind. Presumably the bill will not refer specifically to wind energy generation but will use the phrase “energy generation”. Hopefully, like others, crofters will get involved in that in due course. Is it your bad experience with wind generation that has led you to have those concerns?

Iain Turnbull: No. The concern is that the whole future of wind power and renewables needs to be sorted out. The legislation is creating a preferential status for such development. It assumes that there is a benefit there that there is not necessarily with other forms of development. We feel that that is not necessarily justified. We are not against renewable energy; obviously, as an environmental organisation, we support renewables in the right place and at the right scale. However, we do not see why it needs to be specifically mentioned. It is as simple as that. It is not based on bad experience.

Richard Lochhead: How can it be sorted out?

Iain Turnbull: The whole subject of renewables?

Richard Lochhead: You have just said that it needs to be sorted out. I am just wondering how the NTS thinks that it could be sorted out.

Iain Turnbull: Through dialogue, basically.

Richard Lochhead: Is that not happening?

Iain Turnbull: Yes, but it takes time. Highland Council recently set out its proposals for large-scale wind farm developments in its area. That is to be welcomed.

Elaine Smith: My questions are about Iain Turnbull’s submission and follow on from what Ted Brocklebank was discussing with him.

On page 1 of your submission, you say that the bill

“at best offers little to change to the status quo, and at worst accelerates the demise of the crofting system”.

Again, that is about whether the bill will open up the free market more. I am anxious to explore whether that is real or a perception. Is it about what the minister said, which we heard about earlier in the informal session? Is it about what is not in the bill or is it specifically about the powers

of the Crofters Commission? I am still trying to work this out. Under the heading of “Land Reform”, you mention

“the Bill’s *de facto* encouragement of a free market in croft tenancies”.

Could you expand on what you mean by “a free market”?

Iain Turnbull: As some of the previous witnesses have said, a free market is already there to a large extent. If people acquire a croft, they can do with it what they wish, as long as they get planning consent. That seems to be how it works, despite the regulatory powers that might be in place, which do not tend to make much difference. Perhaps the system should be applied a bit better than it is. That might resolve some of the problems.

Elaine Smith: Could it make a difference if the system was applied better?

Iain Turnbull: Clearly, if it was applied better, that would make a difference. The “proper occupier” definition gives some promise that the bill might make a bit of a difference, assuming that that provision is applied—which is a big assumption. Whatever legislation is produced, if the system is to be a regulated system, it must actually be regulated. There is no point in having a system if it is not regulated—or rather, there is no point in regulating a system if that regulation is not enforced. You might as well get rid of regulation altogether and have a completely free market if that is what you want to do.

If things continue as they are now, the rise in the value of crofts will accelerate. Crofts will become even more scarce, as, in effect, they are eroded. The pressure on housing and housing land is hugely important in most of the crofting areas. The ultimate reason for that lies in the right to buy. Without the right to buy, that high value would not be there to the same extent. There would still be some value, but it would be nothing like as high as it is today.

As I was saying to somebody during the coffee break, everybody from whom I have heard or whose evidence I have read who is talking about new crofts has said in response to the proposals, “Yes, please, that’s a good idea, but we don’t want the right to buy.” There is no smoke without fire. If people are saying that they do not want the right to buy, it is obvious that there must be a problem with it. It seems clear to me that that is where the root of the problem lies. I am not suggesting that the proposals should necessarily be abolished completely, but they might need to be examined a bit more than they have been. The bill does not seem to address the issue but, unless it does, the process will continue to gather pace, and we will lose our crofting communities as we know them

today. Who can blame an individual for realising their assets if they are allowed to do so?

If we look back to the fundamentals of crofting, way back in the 19th century, the idea was not for people to make lots of money from acquiring bits of land. If anything, it was against landlordism. It was all about the land being a community asset. People lived and worked there, and that is what it was to them. That is the fundamental principle of crofting—it is not really about landlords. All this does is substitute big landlords with small landlords, with no effective control over either. There needs to be a system in place to take account of that.

The whole land reform agenda is based on the community and the wider interest in land. It is all about encouraging that by giving people the chance to acquire and manage land. The John Muir Trust witnesses have spoken about what they do, and they are not alone in working with communities. We all do that, albeit in slightly different ways. However, the bill seems to fly in the face of that approach. It is saying that the individual's right is paramount over the rights of the wider community. As long as an individual has the ability to veto developments, ideas or plans, or to push theirs through by acquiring a croft, they can hold the wider community to ransom. That is surely not in line with the principles of land reform. That would be no different from a landlord—in the traditional sense of the word—doing the same thing; it is just on a smaller scale, although not necessarily—it could be on a big scale if there are several crofts in an area where crofts are large.

Elaine Smith: It was meant to be like that, to an extent. Our briefing from the Scottish Parliament information centre tells us that a strict interpretation of the law requires that, when a crofter buys the croft and, in effect, becomes their own landlord, they are supposed to relet the croft. However, that does not seem to happen.

Iain Turnbull: As was suggested earlier, if the purchaser or owner-occupier is living on the croft, the Crofters Commission has taken the stance that it will not intervene. What matters is what is done with the croft. If it is contributing to someone's staying and working in the area and contributing to the community, that is fair enough as far as it goes.

16:45

Elaine Smith: But a strict application of the law might have been a disincentive to buy.

Iain Turnbull: Absolutely.

Elaine Smith: You say in your submission that a simple solution would be to remove the right to buy. Could that be done for future assignments or

new crofts? If you removed the right to buy from a house site, how would that affect a mortgage? Would crofting grants for housing then have to come into play? How would people's ability to get funding to build a house be affected if they did not actually own the land?

Iain Turnbull: Our idea on the right to buy is that, if the right were abolished, it would be automatically assumed that people could not acquire their croft. There is a subtle difference between having a right to buy and being able to buy. If you are able to buy your croft and can justify the need to do so—for a development or activity that would be assessed somehow to ensure that it met the community's objectives and aspirations, and to ensure that it had some social or environmental benefit—and if you can justify taking the land out of the community pool of land because doing so will provide something that is worth while, I think that most people would think that that was a good thing. However, if it is simply that someone, somewhere, arbitrarily decided in 1976 that you could have that right, it is harder to justify that as being a good thing. It is no doubt good for the individual, who can receive a large number of pounds if he decides to sell, but it is not necessarily good for the wider community. Indeed, it could be a poor thing for the community, and it could be damaging to the environment, depending on what is done with the land.

On the issue of house sites, we have entered into agreements with crofters on new crofts at Balmacara, where they did not have the right to buy. We have agreed that they have a right to a single house site. We realised that, without that right, some people would not have been able to take up the tenancies, because there is no way that they could have got a house in the locality. There is a need to provide for such circumstances.

In giving a value to house sites, we followed existing legislation. That is fine, but perhaps there should be another means of assessing what house sites are worth. Rather than paying the landowner, the money that is generated from getting a reasonable price for a house site could be put into a community fund and recycled back into community projects.

I am not suggesting that those ideas are necessarily the answers, because lots of other ideas could come out of this, but those are the issues that have to be explored. There is no evidence in the bill that changing the right to buy has been considered. The idea seems to have been dismissed, with people saying, "Oh, we can't do that, because human rights might be an issue." I am not convinced that human rights would be an issue. They might be, but let us explore that. I agree that if we cannot do it, we cannot do it; but let us find some way of trying to address the

problems. The present proposals seem to be disliked by everyone who wants to create crofts—most of whom are in the communities—so something must be not quite right.

Mr McGrigor: This question is really for the gentleman from Scottish Natural Heritage. I notice from your submission that, unlike some other witnesses, you welcome the bill—except in your final paragraph, where you say that

“the provisions should not impose any additional costs on SNH.”

I put it to you that for many years crofting has sustained the very wildlife that is the envy of Europe and which SNH wants to protect. We have also heard from Baroness Michie—during the informal session—about the value of crofting to Gaelic language and culture. Why would SNH support a bill that so many witnesses have thought might bring an end to crofting?

Ross Lilley (Scottish Natural Heritage): We support the bill if it will deliver young, active crofters to manage the land and the natural heritage in the Highlands and Islands, because that is what we want, and we would be able to interact with them in carrying out our duties. It appears to us that the bill attempts to do that. If it does so, it will deliver what we are looking for from crofting, which is active crofting communities that can manage land.

Mr McGrigor: I know that you mention that in your submission, but many others are telling us that the bill contains elements that might destroy crofting. Are you certain that you are keen to support the bill?

Ross Lilley: Our reading of people's comments on the bill is that their main concern is to do with land tenure and the security of tenure that crofters have. If we found that, as a result of the bill, crofters had less secure tenure, were less wedded to the land and so were unable to manage the land and the natural heritage of the environment that they lived in, that would concern us.

Rob Gibson: I would like to examine further SNH's point of view. Your submission mentions the benefits of

“small-scale and low-intensity land management that is associated with attractive landscapes and a rich and characteristic assortment of wildlife.”

Do you think that agricultural support should be skewed more in that direction? Should crofters get more agricultural support for that reason?

Ross Lilley: The way in which agricultural support is now delivered through the European Union increasingly recognises that the public goods that farmers deliver include wider rural development and community benefits such as public enjoyment of wildlife and the landscape.

Crofting counties certainly deliver those and arguably do so in greater numbers and with greater diversity than elsewhere. For that reason, they deserve support.

Rob Gibson: If agricultural grants were taken away from bigger farms and given to smaller ones, that would help to reduce SNH's costs in relation to supporting wildlife.

Ross Lilley: It depends on the value of the wildlife and the landscape. It does not necessarily matter whether the unit is a large farm or a small croft, as long as the farmer or crofter is recompensed for delivering the public good on their land. We recognise that there are economies of scale and that it can be more difficult to deliver benefits on smaller units in more fragile areas. We have to allow for that if we want the same public good to be delivered in the islands, say, as is delivered in the central belt or eastern Scotland. We must recognise the costs of delivering the public good, but we should also recognise the value of the public good that is delivered.

Rob Gibson: I want to continue with the point about economies of scale. You commented on a couple of things in the bill that might be bad, including the unregulated apportionment of common grazing. Surely if a plan is made by crofters in a township, the inputs that you seek can be discussed at that stage. Does that happen?

Ross Lilley: Yes. To step back a little, although SNH is a public agency like the Crofters Commission, it is a non-departmental public body and it has regulatory functions as well—for example, in relation to sites of special scientific interest. We could just deliver those functions—as we are expected to do under the legislation—and be a purely regulatory authority, but in the past 10 to 20 years we have realised that, before we even set foot in a crofting community, people perceive the legislation as draconian, as if we are going to stop people farming. I hope that we are moving away from that and that people now realise that the truth is quite the opposite. We want people to be active. Most of the wildlife that is found on a site is there because crofting has created a certain landscape. Increasingly, we have a balancing function.

Through schemes, grant programmes and the provision of specialist advice, we can pre-empt the need to get involved in the regulatory side of things. By engaging in dialogue with crofting communities, we can obtain a mutual understanding before a plan or project goes too far down the road of damaging natural heritage interests.

Rob Gibson: I am interested in exploring with members of the panel the idea that before area policies that were decided by crofters could be

informed by what you had to say, they would have to exist so that a coherent view could be taken of what was possible.

Ross Lilley: I can give you a practical example of that. Ian Gillies, who was on the previous panel, mentioned that a development partnership has been set up on Tìree. Alasdair Morrison mentioned the initiative at the edge. In 2001-02, the community on Tìree wanted a new community hall and a livestock market, which was vital to underpin crofting on the island. The Executive asked us to designate a new site for Tìree, which would take up a third of the island. We were concerned that a community that was down on its knees would not want to engage with us on a site and that there might be very few crofters who could manage the site for us when we designated it.

When we asked the other agencies whether they were in the same situation—we approached the enterprise company, the council and the Crofters Commission—they said that they were. In each of their remits, they were finding that the community on Tìree was not able to engage with them in what they were doing. The agencies formed a partnership that works in a similar way to the initiative at the edge. The community asked the agencies to pull together and help them out; it was not a top-down initiative. We feel that the partnership has been quite successful. A development plan has been produced for the island that includes a crofting strategy. Although it is early days, we are beginning to articulate what the crofters think they need from the agencies collectively if a sustainable community is to be delivered. We are starting to act on that.

Rob Gibson: Do the other panel members have a view on plans that emanate from the community?

Nigel Hawkins: I strongly support the development of such plans, which is in line with what I said earlier.

One difficulty with the bill is that it takes specific problems in different parts of the country and tries to make changes throughout Scotland. In other words, it sets out to be a catch-all solution that will cure all the different problems that exist. That is a real problem with the bill. Local plans and agreements are a way forward because they take care of the local issues. That is very much the experience of the John Muir Trust. We know from the crofting estates that we are involved in that it is not possible to impose the same solution on a number of different estates. Crofting just does not work like that.

We are involved in the estates of Sconser, Torran and Strathaird on the Isle of Skye, all of which have separate crofting communities. Those estates are all managed separately because each

community is different and has different issues and problems. In their own way, they all face many of the issues that the committee has been discussing. It is not true to say that we can change all that simply by introducing the bill.

My personal view is that the Crofters Commission already has many powers that it could exercise. Under the present arrangements, many of the issues could be dealt with. The John Muir Trust is slightly worried even about the bill's name. To what extent does the bill set out to reform crofting? I agree strongly with what Iain Turnbull said about the bill not having an overall vision of what crofting will be in the future. There has been no engagement with crofting communities on that issue. There has certainly been no consultation with any of the crofting communities that I work with, not just those on our estates, but those that the John Muir Trust has helped with community buyouts of land. Iain Turnbull and I agree that discussion of the vision of the future of crofting and where it is going is key. That discussion needs to start at the grass roots and work its way up.

Rob Gibson: The Executive has put the cart before the horse.

17:00

Nigel Hawkins: It depends which way round one looks at the situation.

I will add to my point that it is slightly controversial to say that the bill is about crofting reform. The Land Reform (Scotland) Act 2003 reformed land to a significant extent. It made a big difference by giving communities the right to buy, and crofting communities the absolute right to buy, and by establishing public access. The John Muir Trust supported all those major reforms.

The Crofting Reform etc Bill does not represent a major reform, because it just deals with specific problems and issues. It is a fundamental mistake to say that a decline in agriculture raises questions about agricultural activity and to link that to what is happening in the housing market, which is driving an awful lot of activity. If the problem is affordable housing for remote communities—that is a huge issue—it will be solved not by a bill on crofting reform, but by initiatives that relate to housing. I suggest that, if possible, housing should be dealt with separately.

Mr Ruskell: Different communities have different aspirations and different problems. That brings us back to area policies, which Rob Gibson talked about. How would area policies work in relation to renewable energy? Iain Turnbull said that renewables are okay in the right place but that dialogue is needed to find the right place. Ross Lilley said that we should start with SNH's

locational guidance, but that is national strategic guidance that is not concerned with local aspirations. In the crofting counties, how do we tackle renewable energy development, which I admit is often controversial? How will the structures in the bill help to provide resolution?

Iain Turnbull: Ted Brocklebank said that the National Trust's response was negative, but local area policies are one of the good ideas that we support in the bill. Such policies will probably reflect much of what goes on. People make things happen; they work together and talk to one another. Through partnerships—formal or informal—they get things happening on the ground.

The idea of local policies is good, because they will reflect the needs and demands of people in the relevant areas and of the sites that development will affect. Local policies must be the starting point for wind power or other renewable power, because there is no point in having a national strategy that says that all renewables should be stuck in one place if nobody in that place wants the damn things. Likewise, the impacts on other areas of the infrastructure that will be needed to make renewable developments work must be taken into account. The matter is not simple and it needs to be considered carefully. The local policies idea, which ties in well with the ideas that we suggested about local plans, makes sense. That is why we support local policies and think that they are a good idea. They should be ingrained in how we work, full stop—not just in crofting.

Mr Ruskell: If that is the starting point, what is the problem in having renewable energy generation as a reasonable purpose to resume crofting? The first element that is put in place is the local policy. If people want renewable energy, what is the problem?

Iain Turnbull: If people wanted it in their area, there would be no problem in obtaining a resumption, whether or not the purpose is in the bill. Why should the reasonable purpose be limited to renewables? Why should not other forms of development that are not listed be added? My question is why we need to be explicit about what a reasonable purpose is.

Ross Lilley: From our point of view, the planning system provides a starting point. We have already used that system to steer communities—some of which were crofting communities—to develop renewable energy facilities that are appropriate to their location. For instance, in Argyll and Bute, the emerging new local plan has policies that allow communities to develop small-scale wind turbines that will benefit them directly, because all the profits will go to a community trust. There is no reason why crofting

communities cannot use the planning system to develop renewable energy facilities where a commercial situation would not arise.

Mr Ruskell: Throughout the evidence-taking session we have heard about the Taynuilt case, in which the needs of crofters have not been properly dealt with in the local plan. Many people believe that a bad decision has been made there. What will the Crofters Commission's role be? It will have a role in relation to sustainable development, which suggests that renewable energy should be taken into account. Will the Crofters Commission have an input into local plans in relation to the economic needs of crofting communities?

Ross Lilley: I see no reason why it should not act in the same way as we do. We are a statutory consultee on the local plan. We spend a lot of staff time, effort and expertise advising local authorities on how they put policies in the plan to reflect natural heritage priorities. There is no reason why the Crofters Commission could not do the same as us, but reflect crofting communities' priorities so that they are taken into account in the framework. The commission could then work with local authorities to deliver the framework.

Mr Ruskell: Would renewable energy be one of the issues on which the Crofters Commission would want to pass comment?

Ross Lilley: That is certainly what we do in the local plan. We comment on where renewable energy developments might go and what form they might take. The Crofters Commission could do the same.

Nigel Hawkins: Renewable energy is very important because it presents opportunities now and in the future. However, it should not dominate the whole discussion and skew the purpose of the bill.

The John Muir Trust supports renewable energy and supports community involvement. We support renewable energy development on a scale that is appropriate to the landscape and to the community, where the community wants it. We have supported green energy schemes such as the hydro scheme on Knoydart, which is owned and run by the community. We are partners with North Harris Trust—the trust was formed after a community buyout—and we support its small-scale scheme of three turbines to generate the power equivalent of the power that is used on North Harris. Although the scheme is on a fine landscape and there are big landscape issues, we very much support it.

That is an example of the smaller-scale schemes that are taking place. On Tiree, which has been discussed a lot today, there is a proposal for a single turbine that would be owned and run by the community. All the benefits would

go to the community and would be used as a key funding source for the future to lever out grants as matching funding for lottery money, Government money, European money and so forth. That is important and it must be part of the discussion. If the process is managed properly, there will be a major injection of money into communities and it will be controlled by the communities rather than by individuals. That is important for the future.

Mr Ruskell: That approach is supportable and it is a sound way of developing renewables so that communities get the maximum benefit, but the reality is that commercial opportunities are out there and communities will be faced with decisions about whether they would prefer a larger-scale developer to be involved. The community could cut a deal with the developer to ensure that they got economic as well as social benefits. What would your view be if a community wanted a larger-scale development?

Nigel Hawkins: Our stance is that the John Muir Trust, as a wild-land organisation, wants to safeguard the wilder areas of Scotland. We would take our own view on the development, depending on where it was located. Overall, our position is to support communities, which are often against the big schemes. I will not mention them by name, but the communities are against the scale of some well-known schemes although they would support smaller schemes that would not affect their environment or their landscape and which would bring reasonable economic benefit to the community. Obviously, I fully accept that in some places there will be big onshore wind power development schemes. The issue in relation to the bill is the interposed leases and whether, if leases are in place, the communities have a right to buy them. I understand that that has been added to the bill and we support that.

Mr Ruskell: Do you agree that it is important that the communities themselves dictate through area policies the type of development that takes place?

Nigel Hawkins: Yes.

Maureen Macmillan: I have a fairly narrow question on how the bill deals with the balance between agriculture and conservation. The National Trust says that the bill

“is too broad and may lead to a crofter claiming to conserve his croft by effectively doing nothing”.

On the other hand, the John Muir Trust seems to be keen on whins and rabbits. I note that Scottish Natural Heritage seeks a different kind of balance, in which agriculture is seen as the way to conservation.

Perhaps the panel members could tease out the differences between, or similarities in, the points of

view that they expressed in their submissions and say where the balance should lie.

Iain Turnbull: I will clarify our position. Our point is that, if crofters are expected to work the land, they should work the land. We are fully supportive of someone who undertakes environmental activity on the land. However, one of the reasons that the existing legislation has functioned so poorly in that regard is the difficulty that is involved in pinning down the meaning of neglect or lack of use in words that solicitors and the Scottish Land Court like. The provision needs to be defined very clearly or there will be enough loopholes in the bill to enable a coach and horses—never mind a crofter—to be driven through the legislation.

Our concern is that, if we are to have a regulated system, it needs to be just that. There is no point in the Executive putting words into the bill that are meaningless. If someone undertakes what can be called environmental activities, does that constitute an exemption to the need to put the land to some sort of cultivation? We must define things more explicitly; we cannot simply say that that activity is good enough.

There will always be people who will argue that doing nothing and letting the ground revert back to the wild is the best thing; in some cases, that may be the best thing. However, whether we like it or not, there is a loophole in the bill. Our legal advice is that, under such circumstances, if we were to take a crofter to court to have them evicted so that the croft could be used by someone who really wanted to use it, we would get nowhere. We would be no further forward than we are at the moment—the only difference would be that the commission, rather than the landlord, would take the crofter to court.

Maureen Macmillan: Is it possible to define land use?

Iain Turnbull: It is very difficult to do that, as there are, increasingly, many different ways of using the land. Our submission makes the point that conservation work needs to be done as part of a formalised system of management, such as a rural stewardship scheme or land management contract, in which case it would count as a formalised, thought-out or planned scheme. However, if someone simply says that they are sitting on their hands doing nothing, they can be told that that is not good enough. It is a bit like an Eskimo seeing an elephant for the first time: they may never have seen one before, but they know it when they see it.

Basically, the provision needs to be better defined than it is at present. We are not jumping up and down and saying that crofters must work the land; we are pointing out the definite benefits to an area, both social and environmental, of

crofters doing that. One of the fundamental problems with the present legislation is our inability to police or regulate—or whatever we want to call it—that provision. Nothing in the bill gives us comfort that things will be done any better in the future. It is not necessarily the commission that is at fault in that regard; the system is not foolproof.

Nigel Hawkins: We have to take things on a croft-by-croft basis. Each croft is different and the situation will depend on the activity that the crofter undertakes. If a crofter is doing bed and breakfast, for example, are we to say that that is not a crofting activity? I would argue that it is, because a number of economic activities such as B and B can help to sustain the croft.

Environmental management of the land, which Iain Turnbull touched on, is very important to crofting. If the decline in agriculture in the remote areas continues, what are the other uses to which the land will be put? Crofters often want to do things that constitute, in effect, environmental management of the land. All those activities should be considered as part of crofting. We are seeing a change in the economics of the structure of crofting.

It is important that we do not put things in place that will prevent that change. A good plus point in the bill is the suggestion that the Crofters Commission will become more proactive in working with other agencies and looking at development and economic issues as well as environmental and social issues. That will be positive, but the key thing is that the commission does that and that it does it in conjunction with the other agencies.

17:15

Ross Lilley: Nature conservation cannot be used as an excuse for abandoning land. There must be a specific plan or project that is the reason for land being left uncultivated. For example, the bill refers to irises on uncultivated land, but irises are often used as cover by corncrakes and someone might let them grow for that reason. Such land use would be fine and SEERAD or Scottish Natural Heritage might support it. However, it is not necessarily the case that abandoned land supports wildlife or biodiversity; specific holdings must be considered individually. Most crofts that entered into agri-environment schemes would have a plan that, while it might not be completely supported by the scheme, would set out what each parcel of land was being used for.

Maureen Macmillan: Is the bill too vague? Does it point properly to a formalised arrangement?

Ross Lilley: Our submission refers to section 11(1)(b), which is more precise than paragraph 36 of the explanatory notes, which misses out the first part of section 11(1)(b)'s wording and is a bit confusing. The bill states that if a crofter sets out to deliver a specific action for natural heritage, they could be exempt from the crofting purpose conditions.

Maureen Macmillan: The concern is that a croft could be abandoned and that people could say in justification, for example, that the nettles were there for the butterflies. However, you do not consider that the bill would allow people to do that.

The Convener: Scottish Natural Heritage's submission suggests alternative phrasing for one of the bill's policy objectives:

"preventing some landscapes reverting to wilderness".

SNH's alternative wording links up with Maureen Macmillan's point that the bill must strike a balance between ensuring the active management of land, which creates produce and a valuable landscape for biodiversity and the natural heritage, and allowing some land to be wilderness.

Ross Lilley: The issue is the perception of the word "wilderness". To some people it means the abandonment of land, but to others it means a managed landscape, which probably still has sheep, for example. To an urban dweller or an uninitiated eye, the land might seem devoid of people and like a wilderness. "Wilderness" is a difficult word to use in this context; that is why we suggest using a more positive phrase that says that it is a landscape that is of value to the public, whichever way it is managed; it might be a wilderness to some people, but it will be a managed landscape to others.

The Convener: Would the John Muir Trust support that?

Nigel Hawkins: Yes, because wild land is one of the things that the John Muir Trust is about. We think that the word "wilderness" can be used carelessly. Pristine wilderness does not exist in Scotland, although wild land certainly does. Wilderness is almost a personal or internal experience; it is how we see things. I agree with Ross Lilley's comments on wilderness.

The Convener: Nora Radcliffe is not demanding to get in on the discussion, so she will get in first in the next session. I thank the three panel members for coming and for being prepared to talk at length about the issues. We are keen to get the definitions right and to explore the bill's principles as well as its detail.

I suspend the meeting briefly while the next panel members take their places. I hope that they are not already exhausted.

17:19

Meeting suspended.

17:20

On resuming—

The Convener: I welcome our fourth and final panel. We have in front of us Audrey Martin, the senior planning and development officer for Argyll and Bute Council, Ken Abernethy, the chief executive of Argyll and the Islands Enterprise, and Maf Smith, the chief executive of the Scottish renewables forum. I thank you all for submitting written evidence in advance, which has been useful to the committee. Rather than go to panel members first, I invite my colleague Nora Radcliffe to begin.

Nora Radcliffe: Much of the evidence that we have heard is that the perceived market in crofting, crofts, assignments and so on is related to external factors such as housing. I would like the panel to comment on how housing, planning and crofting interlink and whether we are just chasing a hare if we try to use crofting reform to deal with housing.

Audrey Martin (Argyll and Bute Council): In answering, I can also help to clarify issues that arose on the planning application at Taynuilt. It might be beneficial for the committee to get the facts on that. The application for housing development was submitted in 2004. The local housing plan had previously given consent for a housing development of up to 10 houses on that site. The Lorne local plan had accepted the principle of having housing on the site after a consultation that included the Crofters Commission. The site has also been allocated for housing in the new Argyll and Bute development plan, which is at its final draft stage.

The Crofters Commission was consulted on both the Lorne local plan and the new Argyll and Bute development plan and no objections were raised, although obviously the land in question is crofting land. I hope that that clarifies that due process involved the Crofters Commission. The Taynuilt situation highlights the need for the engagement that has been talked about, although the Crofters Commission, under the bill, will be a statutory consultee. The development plan will guide what happens in the future and how the planning authority will respond to a planning application and make recommendations on it.

Nora Radcliffe: I presume that when you drew up the local plan you decided that housing was more necessary than crofting in Taynuilt.

Audrey Martin: I cannot comment on that specifically because I was not involved in that process. However, it highlights another issue,

which is that we have no maps from the Crofters Commission that show exactly where the crofts are. We sometimes get a list of crofts, but we do not have a map to go with it that determines what the boundaries of the crofts are and gives specific details about them. That makes matters more difficult.

Nora Radcliffe: So might there have been a lack of awareness that the land that was allocated for housing was held in crofting tenure?

Audrey Martin: I think there was always an awareness of that. The site was not originally included in the Lorne local plan for development, but the landowner made a submission that it should be. There was a public inquiry and the reporter decided to include the area for housing allocation. Obviously, that was continued in the new development plan.

Nora Radcliffe: It is interesting to delve into all that.

Audrey Martin: Your initial question was whether the bill should be a means of addressing housing need, which is particularly acute in fragile and remote communities. I do not think that the bill is necessarily the right way to address housing need. We must consider the issue more widely in terms of how we sustain communities and what they need apart from housing.

Nora Radcliffe: Very true.

The Convener: That raises the issue of having a proper map base for crofts—something that we have discussed at all our evidence sessions and which witnesses have commented on strongly. How can you make decisions about whether to protect land if you do not actually know the extent of an individual croft or a series of crofts?

Mr Brocklebank: I would just like to get the picture absolutely clear. From what you have said about the Taynuilt situation, it is clear that you did know that it was crofting land. There was no question of your not knowing that. You alerted the Crofters Commission to that and it was asked whether it had any objections, but no objections were received.

Audrey Martin: We received a letter from the Crofters Commission. I can circulate to the committee the planning report as well as the supplementary reports that accompanied it. Supplementary report 2 points out that the commission notes that:

“The site is identified for development in the existing Local Plan and the draft revision of the Local Plan retains this area for housing development. The Crofters Commission as a statutory consultee agreed to the area being released for housing in the existing Plan. With regard to the revision of the Local Plan, still in process, the Commission did not object to the area being re-designated for development.”

However, the Crofters Commission also said that it had

“reservations about this area of land being granted planning permission before discussing the use of this area and that of other croftland being designated for possible development”.

So it expressed two differing views.

Mr Brocklebank: The suggestion that we heard earlier was that, because the local plan had been decided and planning permission had been granted, the Crofters Commission was stymied. It does not sound as if that was the situation.

Audrey Martin: It was open to the Crofters Commission to engage in the planning process, but it raised no formal objections to the local plan or to the new draft local plan as it currently stands.

Maureen Macmillan: I would like to ask for clarification of the Crofters Commission's role. You said that it was a statutory consultee.

Audrey Martin: It will become a statutory consultee when the bill is passed, which the council welcomes. We consult the Crofters Commission on planning applications and we have engaged with it on the new development plan, but it is playing a regulatory role as well as a development role and I do not know what resources and staff are available to it.

Maureen Macmillan: It makes you wonder whether anything would change if it became a statutory consultee.

Rob Gibson: You will be aware that, throughout the country, there are problems with how local plans identify croft land for housing development—sometimes the best land on the crofts is identified—and with where village envelopes are drawn and so on. The degree of consultation with crofters is questionable in many cases, although I do not know whether that is entirely the case in Argyll.

It seems to me that the issue that has not been dealt with here has been raised elsewhere. That is, that housing can be built on crofting land if it is on the common grazings, but not on land that is fit for agricultural purposes of a higher nature. What is the council's response to that in terms of the plan? Has the local plan in Taynuilt taken inby land for housing? Is that the root of the problem?

Audrey Martin: I cannot comment on that specifically. I know that the housing allocation for Taynuilt came about because, as I said, it was not originally proposed through the local plan, and there was an objection to the local plan on that basis. Then the matter went to a public inquiry, and the reporter agreed that a housing allocation for Taynuilt should be included in the local plan, although the council had not originally proposed it. I would just like to clarify that.

With regard to using common grazings for housing development, we are seeing more such applications coming through, and that obviously addresses the issue that you have raised about retaining better-quality land for agricultural purposes rather than for housing development. However, I am not involved directly in the process of allocating land for housing in the local plan, so I cannot comment on that. It might go back to how accurately the records and maps that we hold in the council reflect the situation on the ground as regards crofts.

17:30

Rob Gibson: I am pretty sure that it would do. I would like to pursue this further. If crofters and townships—and/or wider areas—drew up development plans, how would those be articulated with the statutory local plan?

Audrey Martin: There is consultation in the local plan process, and the council recognises that the Crofters Commission needs to be engaged in that process. It is also open to anybody in the wider community to get involved in consultation on development plans. We hope that people know what is going on and that the consultation is well advertised. There needs to be engagement of those people—there is no doubt about that—and we would welcome that. The planning authority does not have specialist knowledge on crofting, so we rely on the Crofters Commission and crofting communities to tell us what the position is.

Rob Gibson: As Maureen Macmillan suggested, there must be more than just statutory consultation if the problem that is caused in crofting communities by the shortage of housing is to be addressed in the local plans. Does the bill propose anything other than to make the Crofters Commission a statutory consultee, although it does not have enough staff to take on that role? Or should there be more in the bill to help crofters and crofting communities to articulate their views in the local plan process?

Audrey Martin: The proposed area policies could help, but that depends on the definition of an area. It also depends on what the area policy process involves and how engaged the communities will be in the drawing up of those policies. We recognise the importance of crofting to our remote and rural communities, and we work in partnership with Argyll and the Islands Enterprise, through the Argyll and Bute agricultural forum, to produce an agricultural strategy that will sustain crofting and agriculture in the area. However, we need to take the process out to the crofting communities and get more local involvement, as you say, to feed back into the development plan process; otherwise, the plan will

just sit there on its own and any planning applications that are made will not fit in with it.

Rob Gibson: Highlands and Islands Enterprise has said that the crofting areas should be coterminous with the Highlands and Islands Enterprise area. That would mean the extension of crofting into large parts of Argyll. How much would that affect the way in which you plan locally? Would that be a good thing?

Audrey Martin: Crofting is a key use of land in sustaining our more remote and fragile communities, and we would take that into account in deciding how an area policy or overall vision would sit with the new local plan or any developing local plans. The structure plan supports crofting and recognises its importance. It says that careful consideration will be given to planning applications for any developments that could undermine crofting. There are also policies in our developing local plan that recognise the importance of crofting. However, we need to ensure integration and wider partnership engagement.

Ken Abernethy (Argyll and the Islands Enterprise): Most of the part of Argyll that we cover is croftable. The only part that is not under crofting is Arran and Cumbrae, and there is a desire to see an opportunity to croft on Arran. Within our area, the places that will benefit most from crofting are already covered. It is the islands that are most fragile, and they are the areas that will gain the greatest benefit from being able to establish crofts. What we need is the opportunity to establish new crofts in non-crofting areas rather than the power to create crofts in existing crofting areas.

Mr Ruskell: One of the bill's objectives is to establish new forest crofts. You will be aware of the committee's recent work on biomass. How do you envisage the establishment of forest crofts assisting the biomass industry? In our inquiry, we talked about clustering and developing critical mass for the biomass industry in different areas, including Argyll.

Maf Smith (Scottish Renewables Forum): Your inquiry and the call for a biomass strategy were welcome. As you found, different bio-energy projects are likely to develop in different areas, depending on the level of the forestry resource and what we might call the wood chain—how many local people could, and therefore should, use that resource for large-scale generation, individual heat boiler networks or district heating. Argyll is a good example of a region in which there is interest in all three of those, although all three are perhaps not suitable for every area. It would, therefore, be helpful to integrate a biomass strategy with the local plan to identify what was most appropriate. The relevant support would then be needed to deliver such schemes. We would

see it as beneficial to have such forestry areas available on croft land, as that would stimulate and encourage the development of a wood chain that could be managed or supported locally.

Audrey Martin: We have been developing our clusters in Argyll and Bute, but there are locations where we have gaps, especially in the Oban area. That is where the development of forest crofts could assist in building the capacity for biomass. It is all about establishing the sustainability of our area and trying to ensure that our energy needs are met locally. That will create jobs and keep things within our communities, and it could also help to sustain some of our islands, such as Mull. On Mull, the community is considering purchasing the forest and developing biomass.

Ken Abernethy: Biomass is enjoying a degree of success in Argyll; however, the stock has to be used relatively close to the source—within a radius of 40km—to make it worth while. There are quite a few areas in which people would not be able to do that without further planting. So, new forest crofts could make a valuable contribution to the production of renewable energy.

Mr Ruskell: I return to the wider questions on renewables policy that I asked the previous panel. Where do we draw the line? We will have area policies for the crofting areas, local plans and structure plans. Do you see the area policies tackling renewable energy? We want the plans to conjoin and the detail to be reflected throughout; however, there seems to be an issue about process and the roles of the Crofters Commission, landowners and local communities. The SRF believes that there may be a difference between what the community wants in the long term and what the landowner or developers want in the short term. That brings us to the issue of interposed leases. How can we sort out the guddle of interests and address the need for planning? It is a dynamic area in which there are controversies. At the same time, we need to get a plan in place that finds a way forward.

Maf Smith: In terms of renewables, decisions on what might be termed the appropriateness of developments or types of developments will be made within the plan-led system to which we are moving under the Planning etc (Scotland) Bill. We now have examples of local authorities throughout Scotland that are looking to highlight in their local plans preferred areas, or preferred areas of search, for different types of technologies. In doing that, the local authorities need to identify areas of good resource and areas in which they are aware of constraints—which might relate to, for example, ecology or landscape—that might prohibit certain types of schemes or schemes of a certain scale.

On the issue of local contributions to delivering the national renewables target that the Scottish

Executive has set, local authorities are well placed to gather the views of the different consultees, including statutory consultees, and to highlight where schemes might be appropriate. By involving crofters in the local plan, the local authority can work out where there is appetite for particular types of schemes. However, any proposals would still need to be cross-checked with other statutory consultees to check that other issues—ecology is an obvious one—will not stop the scheme or limit aspirations.

Audrey Martin: Again, local plans identify wind farm development policy at both a commercial and community level and they provide preferred areas of search for such developments. Area policies need to take account of that.

The council is also considering identifying what resource exists within the area for renewables developments, including wave, tidal and wind renewables projects. Obviously, there is a need to be realistic about what resources are available and where those can best be developed, given the capacity and infrastructure that is available to serve that developing industry.

Mr Ruskell: Is there not a danger of mismatch? Correct me if I am wrong, but I think that, if a community has aspirations to buy out an estate and decides to go ahead with the buyout, the interposed lease could become an issue. Therefore, would it not make sense for developers in the renewables industry to engage not only with landowners but with the crofting policy process as well? If a landowner wants to push ahead with a renewables development but the community decides to buy out the estate a couple of years down the line, the community might then say, “Bye-bye developer”, because they want another developer to deliver a better scheme. How do developers avoid that financial risk and engage with the community rather than just with the landowner?

Maf Smith: As our submission points out, developers are not unwilling to work with communities or crofters, but the current situation is that relatively few schemes are being developed in parts of Scotland where there are crofting interests. That demonstrates that the current situation prohibits schemes going forward. For that reason, we welcome some of the changes under the bill that will encourage such developments.

For developers, the potential for a change in ownership and a change of rights can be problematic. Many developers would work in crofting areas, but proposed renewables schemes can—depending on the scale and type of the scheme—take several years to complete and involve substantial investment by the private developer in discussion with the landowner. If a right-to-buy option means that all that work could

be taken away, developers will not consider developing schemes in areas where their development rights could be removed.

We have proposed the option of allowing developers to use longer leases, which could be done under existing legislation. That would avoid the controversy surrounding interposed leases, which the committee discussed last week. We think that there are ways to do that. If renewables are to be seen as appropriate in crofting areas in the way that we believe that they should be, we need a system that will encourage the private sector and the investment community to prioritise developments on crofting land. At the moment, that does not happen.

17:45

Maureen Macmillan: We heard evidence about the need for crofters in Tiree to have several crofts—perhaps eight, nine, 10 or 11—in order to make a living, because of there being no other work available to them. It is not possible to work as a part-time crofter there. I was wondering about that. When I was in Tiree during the summer, my perception was that tourism was booming—so much so that the crofters were chasing surfers off the machair, as there were too many of them. Where does the balance lie? Is there anything in the bill that could help crofters to get involved in tourism services to supplement their income in places such as Tiree, where, traditionally, that would not have been done before?

Ken Abernethy: There are plenty of mechanisms in place to support people who wish to change the area of work in which they are involved. There is also a human dimension to it. Simply creating the opportunities for people to earn their living in another way does not mean that particular individuals can just move over. For example, I imagine that a crofter in his 70s might find it difficult to start earning his income in a different way. We are working as hard as we can to produce as many options as possible, but they will not match up with all individuals’ requirements. That is just life.

Maureen Macmillan: But you are being quite proactive in this regard.

Ken Abernethy: The islands are a very high priority. You mentioned Tiree and, as Ross Lilley mentioned, a lot of work went into the island at a time when the situation there was sliding downhill pretty quickly. Anybody who has seen the island over the years will recognise that the situation has been reversed. That is not to say that everything is smooth and easy—it is not. It will always be a struggle—it will always be hard.

Maureen Macmillan: We took evidence on Gigha about the situation there, and the idea was

expressed that it would be good to attract people with other skills to newly created crofts. Might Argyll and the Islands Enterprise have a role to play when crofts are assigned? Would it be a good idea to develop some sort of points system, for instance?

Ken Abernethy: We do not have a formal points system, although we have scales of priority. In recent years, we have had sufficient funds to do most of the projects that we wished to do. Anyone who establishes a viable business on an island has a very strong chance of being funded, provided that such funding fits within international trade rules.

Maureen Macmillan: Where does the balance lie between somebody who runs a business on a croft and somebody who uses a croft for agricultural purposes?

Ken Abernethy: We do not fund the agricultural side; that is done through SEERAD. We do not have a problem with someone who runs a business part time, and we are perfectly happy to assist with that. We would probably not take that approach in Oban, because we do not think that that is what is required for the economy here. We would be prepared to give such assistance in a more fragile area, however, as that would be more appropriate to the area's needs.

Richard Lochhead: When we scratch the surface of many of the more contentious issues that have arisen in connection with the bill, we find that the underlying issues tend not to be anything to do with crofting, such as the shortage of affordable housing. We have heard about young people leaving the community because if they cannot get a croft, they cannot get an affordable house.

We have heard all about the concerns over the free market in crofts. Some people might want to cash in because crofts are now worth a lot of money. That goes back to the issue of demand for housing outstripping supply, which seems to be the biggest issue lurking behind the scenes. I wonder what the local enterprise company and the council have done to investigate the link between the affordable housing crisis in rural Scotland, particularly in Argyll, and crofting.

Ken Abernethy: Housing is recognised as one of the top priorities in the Highlands and Islands these days. Interestingly enough, it is not strictly within our remit. All the routes seem to be coming to a small number of destinations, such as housing and transport. It is recognised that we must find new mechanisms to address housing shortage; otherwise, we will fail in our wider mission.

The main resolution to the situation lies in working alongside our partners, who have direct

remits for such issues, and in encouraging and supporting them where we can.

I can give examples where we have acted in the past. On Colonsay, we secured a piece of land that was essentially for business units but was larger than we required. We spoke to the housing association and it developed housing alongside the business units to increase the housing supply. We mobilised and put in infrastructure such as roads and power, which made it easier for a housing development to be built. We are being strongly encouraged by the leadership of Highlands and Islands Enterprise to use original thinking wherever we can to identify such opportunities.

Another key topic has come up today. One of the solutions to the dilemma of the open market in crofts is the old-fashioned one of increasing supply. Plenty of land is in public ownership. If we had the ability to waive the right to buy, we could increase significantly the supply of crofts. That should satisfy the people who have a true aspiration to be crofters, as opposed to the people who see acquiring a croft as a method of acquiring a house. That could be a useful way forward.

Richard Lochhead: If there was a free market for crofts, presumably the best ones would be snapped up by the richest people.

Ken Abernethy: The crofts that I am proposing would be for rental only and would therefore be governed by current Crofters Commission rules; the opportunity would not be that great. Some differentiation would start to be made between existing crofts that are not governed in that way and those that would be created in the future. The workability of what I propose would depend on how much extra land was freed up.

Audrey Martin: The lack of affordable housing is a huge issue for Argyll and Bute Council. In our work with AIE, through the Tìree development partnership that Ross Lilley spoke about earlier, it became clear that housing was a big issue, especially in respect of the relocation to Tìree of the Scottish Executive jobs associated with the crofters building grants and loans scheme. There was an issue about finding housing to accommodate the people who were going to take up those jobs. Whether someone is in Cairndubh or on Tìree, affordable housing is certainly an issue throughout our area. We are trying to work with Communities Scotland and other partners to address the problem.

The idea that crofting can be used to meet housing needs will not come to fruition. It is not necessarily the answer to all our problems, although in certain locations it could assist. There is a huge debate to be had about how the free market operates and whether we should control it

and prevent people from realising huge amounts of money from crofting tenancies. Perhaps requiring people to draw up and adhere to a croft business plan might discourage them from considering taking up croft tenancies as a means of acquiring a second home or a house without having to work the croft. That might be something to consider.

The Convener: To follow up that point, I want to ask you about your proposal of a minimum size of croft as a way of avoiding the situation in which lots and lots of houses are built on subdivided croft land, which would eventually lead to an area full of houses with gardens. That is not the same as crofting, even if people are gardening and growing produce. Where would you set that threshold? How would it work in practice?

Audrey Martin: It is very difficult to set a threshold. It goes back to economies of scale and to the diversity that exists in the different crofting townships in Argyll and Bute. The first panel talked about the difference in the size of crofts on Tiree in comparison with the size of those in Taynuilt or elsewhere in Argyll and Bute or the Highlands.

There is a concern that the size of crofts seems to be decreasing. Applications are coming into the planning system that involve the continued subdivision of crofts, to the extent that they are becoming house plots. How we set a threshold depends on the use of the croft. If it is for agricultural use, it will need to be a certain size. If it is for horticultural use, it will need to be a different size. The process becomes complicated and difficult. Another way of tackling the issue might be to tie people into croft business plans or management plans that require them to think about what they do with the land, rather than just to purchase a tenancy with a view to erecting a house on it. It is a difficult problem to solve.

The Convener: We should leave things at this point. We could be here for another four hours, but I am not sure that we would get better answers than you have given us already this afternoon. I thank everyone for coming to the meeting. We have discussed a range of issues, such as where crofting will be 15 years from now and the vision of the bill. We have spoken about how we can influence the outcome, especially in order to sustain rural populations. There has been a great deal of enthusiasm from crofting communities and landowners for creating new crofts. The issue of housing has been raised, and we will have to deal with it in our report.

In evidence from crofting communities, we have discussed the issue of how we meet the needs of crofters who want to retire but cannot afford to buy somewhere else. If they were to move, a croft would be freed up for a younger person. That point has been made strongly. We also spoke about the

need to ensure that there is affordable housing in addition to crofting land in crofting communities. That issue came through clearly. A lot was said about the right to buy and market value. The issue of how we protect the culture and Gaelic, which are entwined with crofting communities, was also raised today. There are many questions about the working of land, especially for environmental and economic benefit, and how that plugs back into the social fabric of crofting communities. The importance of crofting to rural communities has been emphasised. All the points that I have mentioned have been made to us strongly today. That does not help us to write our report, because some questions were posed in opposition to the bill.

We have received a lot of good evidence. I thank everyone concerned—especially those who have stuck through right to the end—for giving us their time this afternoon. I thank our hosts at Argyll and Bute Council, especially Lorna Whyte and Mary Buchanan, who helped our staff with all the arrangements to set up the committee meeting and made it work seamlessly today.

If we have sparked off a burning thought that people would really like us to consider before we conclude our report, it would be helpful if they could let us know about it within the next week. If the evidence is succinct and to the point, there is a strong chance that we will read and consider it, which means that it might influence our final report.

Next week we have our last oral evidence-taking session on the bill. We will be at the headquarters of Highlands and Islands Enterprise in Inverness, where we will hear from Highland crofters, Highland Council, Highlands and Islands Enterprise and the deputy minister, for whom we are piling up a series of questions and issues.

Meeting closed at 17:59.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 17 May 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID TYPETALK calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron