

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Monday 15 May 2006

Session 2

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CROFTING REFORM ETC BILL: STAGE 13229

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE 16th 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, Etrick and Lauderdale) (LD)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

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

Eleanor Scott (Highlands and Islands) (Green)

THE FOLLOWING GAVE EVIDENCE:

Keith Aitchison (Public and Commercial Services Union)

Rhona Brankin (Deputy Minister for Environment and Rural Development)

Ethel Burt (Scottish Executive Legal and Parliamentary Services)

George Campbell (Highlands and Islands Enterprise)

Councillor Richard Durham (Highland Council)

Jackie Forsyth (Public and Commercial Services Union)

David Green (Crofters Commission)

Alistair Maciver (Scottish Crofting Foundation)

Archie Macnab (Prospect)

Allan MacRae (Assynt Crofters Trust)

Shane Rankin (Crofters Commission and Scottish Executive Environment and Rural Affairs Department)

Drew Ratter (Crofters Commission)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Cowan House, Inverness

Scottish Parliament

Environment and Rural Development Committee

Monday 15 May 2006

[THE CONVENER *opened the meeting at 14:01*]

Crofting Reform etc Bill: Stage 1

The Convener (Sarah Boyack): I welcome committee members, witnesses, members of the public and the press to this meeting of the Environment and Rural Development Committee, which is taking place in Inverness, at Cowan House, the home of Highlands and Islands Enterprise. I am delighted to be here.

This is our fourth evidence session at stage 1 of the Crofting Reform etc Bill and the third to take place outwith Edinburgh. We were keen to come to the crofting counties to talk to people.

I will go over the domestic arrangements, as is customary. I remind everybody in the room to turn off or turn to silent their mobile phones, BlackBerries or any other electronic equipment that might beep. I have received apologies from Elaine Smith, who cannot be with us. However, John Farquhar Munro and Eleanor Scott, who are not members of the committee, are present. Fergus Ewing, who is also not a member of the committee, will arrive later.

This will be our final evidence session on the Crofting Reform etc Bill. We are gathering evidence before we consider our report to the Parliament on stage 1 of the bill. Our job is to consider the bill and all the evidence that has been received and to draft a report to the Parliament that recommends whether the bill's general principles should be agreed to. Today's witnesses will—I hope—help us through the process. They are representatives of organisations that have a keen interest in crofting in the Highlands and Islands. We will also hear from the Crofters Commission, representatives of its staff and, finally, the Deputy Minister for Environment and Rural Development. If our previous meetings are anything to go by, it should be a packed day.

I welcome panel 1, which consists of Councillor Richard Durham, chair of Highland Council's land and environment select committee; George Campbell, a board member of Highlands and Islands Enterprise; Allan MacRae, chair of the Assynt Crofters Trust; and Alistair Maciver, a Scottish Crofting Foundation area representative. We are grateful for the written submissions that

the witnesses provided in advance, which all committee members have been able to read and reflect on.

I am struggling to see people at the end of my side of the table—I can just see Maureen Macmillan's pen. I invite Ted Brocklebank to kick off the questions.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have a question for Mr Maciver and Mr MacRae in the first instance. In his written submission, Mr Maciver stated:

"I have commented on this bill on many occasions and the more I see and read the more convinced I become that it is a hopeless hotchpotch of bits and pieces".

Mr MacRae seemed to back that up. In his submission, he stated that

"the Crofters Commission already has adequate regulatory and development powers at their disposal".

Mr Maciver said that the bill is a mess and a hotchpotch, and Mr MacRae seemed to back up what Mr Maciver said in asking why we need it. Will you expand on what you said and explain your thoughts?

Alistair Maciver (Scottish Crofting Foundation): I have commented on the bill on a number of occasions, right from the early consultation stages, in a series of meetings with officials, and I am still not convinced that it is not just using a sledgehammer to crack a very small nut. There are some difficulties that, as I pointed out in my written submission, could have been addressed had the commission used its regulatory powers to control the problems that we face regarding the owner-occupier—now the proper-occupier—situation. I began by saying that I thought that the new definition was totally unnecessary, but I have revised my view and now believe that there may well be some merit in going down that route. However, that does not alter the fact that it was unnecessary in the first place.

The bill is so convoluted and difficult to follow that it loses all sense, as far as I am concerned. I defer to my colleague, Allan MacRae, who will give you his thoughts.

Allan MacRae (Assynt Crofters Trust): I welcome the opportunity to say something about the definition of "proper occupier". The truth is that, if someone is a tenant on croft land, their tenancy is not unconditional. The Crofters Commission already has ample powers to take action against those who are not using the land properly. Even if someone is an owner-occupier, the land is still held under crofting tenure and the Crofters Commission has ample powers to take action against them. I agree with Alistair Maciver that a lot of the bill is re-legislating for powers that the Crofters Commission already has but is unwilling

to use. That is the crux of the matter. We feel that more people in the commission should have a greater knowledge of crofting, so that the commission can make decisions in the best interests of crofters.

Mr Brocklebank: Thank you. Later we will hear from Shane Rankin, who will be able to respond to your points.

The confusing thing for the committee is that we have asked these questions of a number of different groups and there appears to be some doubt whether the Crofters Commission has the regulatory powers to which you refer, as more and more of the appeals that go to the Scottish Land Court are being upheld. You say that the commission already has the powers, but it appears that the commission has tried to test those powers and has been thwarted in its attempts by the Land Court.

Allan MacRae: This is obviously more complicated than it may seem. I would have thought that the commission had ample powers but lacked the will to use them in most cases.

Mr Brocklebank: In your written submission, you say that, far from encouraging young people to remain in the crofting areas—especially in places such as Assynt—the bill, if passed, will allow the current situation to continue, with young people being lost from those areas.

Allan MacRae: Yes, if a person is allowed to assign their croft and market forces decide who gets it. Judging by what has been said to date, it seems that the Government would see nothing wrong with a person being allowed, in a non-family assignation, to assign their croft to the highest bidder. It is obvious that having a croft tenancy will become the passport with which more affluent people will be able to buy the land, and that local people will not be able to compete for tenancies. If a market is created in croft tenancies, even tenancies that would normally be assigned within families will inevitably—human nature being what it is—find themselves on the market as well. That must not be allowed to happen.

Mr Brocklebank: Is that happening at the moment?

Allan MacRae: Yes, and any new legislation should address the situation to stop it happening.

The Convener: Would Councillor Durham like to describe Highland Council's perspective?

Councillor Richard Durham (Highland Council): Many strongly held views have been expressed. Within Highland Council, there is a fairly clear view that we live in a free-market world. There is a free market, but it comes back to how the crofting system and the Crofters Commission can control that free market through the use of regulation.

Any crofter is required to croft—the issue here is the activity that the crofter carries out on the croft. I hear the views that have been expressed and I sympathise with them to an extent. However, the bill is about the well-being of crofting as a whole.

The council supports the Executive's bill, which reaffirms crofting as a system of land tenure. The crux of the matter is how regulation can be used to maintain the viability of fragile crofting communities. How can the regulatory process be used to give opportunities to young folk in crofting communities who aspire to crofting? I do not think that we can control the free market; control will have to come through the regulatory process.

Mr Alasdair Morrison (Western Isles) (Lab): You say that we live with a free market, but that you want regulation. How can the two concepts co-exist?

Councillor Durham: I believe that they can co-exist.

Mr Morrison: How can you have a free market within a regulated system?

Councillor Durham: The proper-occupier proposal means that—to take an extreme situation—someone from the south of England who has retired and sold up and who wishes to come and live the Highland ideal will have to understand that buying a croft requires them to carry out crofting.

Mr Morrison: That merely regulates the purchase price, not the selling price. The council that you represent says

"a system of regulated tenure requires to be firmly and consistently regulated."

Does that mean that the current arrangements do not do what the submission from the council said they should?

Councillor Durham: The council's view is clear. The process has been very interesting for me. I am an Easter Ross farmer and I chair the council's land and environment select committee. We have had these debates within Highland Council on many occasions. If you allow the free market to reign, there is a concern that you will kill off crofting over a period of time.

Everybody accepts that the crofting system has been good for the Highlands and Islands over the past 100 years. It seems to me that, in introducing the bill, the Executive is reaffirming its belief in the crofting system.

The Convener: Would George Campbell like to come in?

14:15

George Campbell (Highlands and Islands Enterprise): I am happy to give my view.

The process has been interesting because it has brought to a head a discussion that has been going on for a long time. The right to a croft is state conferred, but in my experience a tension has built up over a long time as people have also tried to realise the private benefit of having a croft. The current process has brought to light the difficulty that there has never been a public debate about whether a croft is a state-conferred benefit, with all that that entails, or whether it is a private asset that people can realise as and when they want to.

HIE is very concerned that no overall vision for crofting accompanies the bill. If such a vision was in place, it could be properly debated in an inclusive process with agencies and crofters.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Last week, the committee was in Oban, where we heard about the situation with the housing development in Taynuilt. There appeared to be a major mismatch between the needs of the crofting community and housing proposals. How can we ensure that the planning system adequately reflects the special needs of crofting communities?

This week, Parliament will discuss the general principles of the Planning etc (Scotland) Bill. There seems to be a small window of time during which we can bring together the Crofting Reform etc Bill with the provisions of the Planning etc (Scotland) Bill. What improvements need to be made? Is it about best practice on the ground, or do we need to change the legislation? I would like George Campbell to answer first, because I believe that the issue is reflected in the HIE submission.

George Campbell: Housing is a perennial issue in the Highlands. As an economic development organisation, we find that the lack of affordable housing—or the lack of any housing—comes up constantly. One of the previous witnesses suggested that the Crofters Commission could become a statutory consultee in the planning process. That makes sense to us, as it would bring the commission into the local planning process and would help to avoid the conflict with arable land that has caused concern.

HIE should also engage more dynamically in the local planning process, because that is where a lot of the systems and processes that could help to avoid conflict are set up.

It is going to be difficult to solve the housing issue through crofting. One of the big issues that we hear about is access to services. At the moment, services tend to be grouped in crofting townships, and the easiest way for a site to get a cost-effective connection to services is to build infill housing on croft land. The issue cannot really be resolved in isolation. The tensions surrounding

houses being built on croft land are therefore more to do with the provision of services than with any proposed legislative fix.

Councillor Durham: Crofting farming practice is carried out on fragile land. In developing housing, it is terribly important to protect the good land. We must take the view that a croft is not just the inby land but includes common grazings. As the Executive takes forward the Planning etc (Scotland) Bill, it is important that that bill contains a presumption against using the good land.

I hear what George Campbell is saying about the need to address the issue of services. However, we cannot say that we have to build houses on good land because inadequate service provision by Scottish Water, among others, means that they can only be built there. We have to consider the overall protection of the good land. If we do not protect the good land, that will be another way of killing crofting in the long term.

Mr Ruskell: What about the process whereby local plans are drawn up with crofting communities? Perhaps Allan MacRae could tell us how the crofters in Assynt interface with the local plans that the council produces. Are the needs of the crofting community reflected in those local plans? How does the community get its views into the local plans?

Allan MacRae: That is part of the problem. Do planners listen to what crofting communities say? I agree entirely with Councillor Durham—a presumption should be made against using valuable inby croft land for housing, because ample common grazing land is available for that. George Campbell made a fair point about services, but we must look beyond that and protect the valuable inby land. I hope that legislation will make it clear that there is a presumption against using inby land. I would have thought that the Crofters Commission would have come out strongly on that before now, since its role is to regulate crofting and to protect crofters' interests.

George Campbell: I clarify that I was not for one moment advocating that it would be okay to develop housing on inby ground or arable ground; I was just trying to explain the pressure to develop such land. I suggested that if a more vigorous approach of involving the Crofters Commission or crofting interests in local plans was taken, we could begin to consider providing services not on arable land but on common grazing land, which may have less agricultural value.

Mr Ruskell: What about the layer above that—the structure plan? I ask Richard Durham how crofting and the availability of crofting land and development land are reflected in your structure plans.

Councillor Durham: Our structure plan contains safeguards on that. In producing a new Wester Ross local plan recently, Highland Council undertook a consultation process with crofters. I think that the Sutherland local plan consultation is about to happen. Quite a lot of consultation has taken place in Skye, so good local practice is out there. We must keep working on that, because affordable housing is crucial to the well-being of crofting communities.

Mr Ruskell: Is it right that the Crofters Commission, which has a development role in structure plans, should represent crofters' views? Should the communities represent their own needs?

Councillor Durham: I suggest that both elements are needed. That depends on the shape of the Crofters Commission at the end of the bill process and, as it has been made clear that it will be a non-departmental public body, on how the board will be structured and to what extent the board will have representation of crofters, the wider community and agricultural interests.

Housing is a key element in the future well-being of crofting communities. If the Planning etc (Scotland) Bill and the Crofting Reform etc Bill can formulate the structure through which representation takes place, that will be to the good.

I cannot speak for the islands, but in the Highlands, local communities are consulted under the local plan process and the system is working much more effectively than it used to.

The Convener: I have a supplementary question for Councillor Durham. HIE suggests that provision should be made for decrofting applications to be decided before planning applications. Is that a potential way forward? Would you consider decrofting in the local plan or would you routinely consider it when dealing with regular planning applications? Perhaps I should ask HIE to explain its proposal, after which Councillor Durham could answer.

Councillor Durham: I am interested in why HIE made the proposal.

George Campbell: The proposal springs from the concern about the absolute presumption that if someone obtains planning permission for a house site, that leads automatically to decrofting of the house land. Whether the process operates the right way round was discussed and it was felt that there would be merit in reversing the process so that the agricultural interest in the land was paramount, rather than the availability of planning consent.

The Convener: Is that something that Highland Council would consider?

Councillor Durham: I suggest that we would not go down that route. It is fine if the new house site is decrofted, but if that is done, we come back to the issue of the free market, which is part of the problem. Ultimately, the bill must look after the well-being of crofting.

I have two key points. We want to encourage crofting activity but, ultimately, we do not want to fragment the crofting communities. We want to maintain viable crofting communities.

Rob Gibson (Highlands and Islands) (SNP): I will take up that point. A conference on population increase will take place tomorrow. The Highlands can be congratulated on its success in achieving population growth, but we are here to discuss crofting, which in the past was said to retain population in the more remote areas, including the islands. The crisis in those areas, which is hidden by the population increase in Inverness, goes right to the heart of the issue. I would like to ask the members of the panel whether they think that the bill offers any hope of bringing people back into crofting, in the light of Allan MacRae's statement that

"There are many successors of former generations who created these crofts who are absentees by force of economic necessity rather than choice."

Who would like to take that on?

Allan MacRae: We are all aware that we have an aging population in many of our crofting areas, so there is a great need to ensure that we can retain young people. That is why it is hugely important that the land is not put beyond their reach by market forces. It is already the case that local housing is beyond the reach of local people. Is the Government willing to extend the same principle to the land? Surely if there is to be any social justice for our communities, that must not be allowed to happen.

Alistair Maciver: I will go back a step to talk about planning input. In Sutherland, we are just about to begin the wider consultation on the local plan. Perhaps I could suggest a proposal that it might be worth incorporating in the bill: the Crofters Commission should certainly be a statutory consultee in every case in which an application relates to croft land. The stage beyond that would be to require the commission to consult the local crofting community, and even if the commission, in its wisdom, decided that an application should be granted, the evidence that the local crofting community submitted should be incorporated in its response.

Rob Gibson: What is HIE's view?

George Campbell: You asked whether there was anything to welcome in the bill that would help future population increase, and I think that there is. One of the stated objectives of our organisation is

to increase population in the Highlands and Islands to half a million people. That is a long-term goal. We consider that the bill—especially its proposal to allow new crofts to be created—is an important step towards meeting that overall goal.

The last time that I was involved in assessing the demand for crofts was more than 10 years ago, when I was involved with the Scottish Crofters Union. At that time, we did quite a bit of work with the University of Aberdeen to examine the demand for crofts on Skye, which was huge. We found that, as well as a huge expressed demand for crofts, there was a latent demand for them, and that was at a time of quite high unemployment and falling population in the Highlands.

We seem to be in a different time now. The news today mentions a population increase in the Highlands. I note your comments about whether growth in Inverness is masking the extent of that increase, but there is a general increase in population. There is also low unemployment in the Highlands and Islands.

14:30

Rob Gibson: That is because of emigration.

George Campbell: Well, it is a complicated argument. There is low unemployment and high in-migration. The creation of new crofts is important in relation to issues such as where people will go, their access to land and their opportunities.

Rob Gibson: Crofting has been central to the retention of people in the Highlands. Unless we get that into the centre of the debate, we will overlook the indigenous people, who are losing out. I have no objection to eastern European crofters coming here, but I object to the fact that, as Allan MacRae said, people are leaving through

“economic necessity rather than choice.”

I have heard nothing so far from any of the witnesses to suggest that the bill will change that situation, or that it is a priority under the bill at all.

Councillor Durham: If the bill contained the right provisions on proper occupiers, it could address that point, but it must do so by creating a framework that will allow young local folk access to crofts, whether new or existing, in their communities. Ultimately, the bill will be judged on whether it succeeds in doing that. If it does so, it will be viewed as a success.

Rob Gibson: To take up Alistair Maciver’s point, how would a local policy contribute to the regulation of crofting in the Highlands? Would crofting communities be able to have their own plans that articulated with a Crofters Commission

plan and the statutory local government plans? Would the local crofting plan be an essential part of that?

Alistair Maciver: Yes, I would go along with that. The nub of the question is the discussion—consultation, if you like—between the commission and the local crofting community on how to move forward. Allan MacRae touched on the difficulty of increasing the population. The objective is laudable but within it is another objective. Our objective would be not only to increase the local population, but to ensure that we increase the local crofting population. The cornerstone of Allan MacRae’s argument is that that is not happening and that young people have to leave crofting areas for a number of reasons, not least of which is the financial situation. Incoming migrants—for want of a better term—are coming into the area with plenty of money and are able to secure crofting tenancies over the indigenous population.

Maureen Macmillan (Highlands and Islands (Lab): When we were in Oban last week, we heard evidence from the Isle of Gigha Heritage Trust about what it is doing to create new crofts on Gigha and how it goes about choosing tenants for the crofts. The trust has a list of priorities or points that it marks off against applicants, such as whether they are local people or what else they have to offer to the community—for example, a carpenter or other skilled worker would gain more points. Perhaps local areas could have some sort of points system to help to choose the right people for crofts to be assigned to.

I also want to ask about employment in general. We heard that people on Tiree have multiple crofts because there is no other work. If they do not have several crofts—up to eight, nine or 10 crofts—they cannot make a living. Surely HIE has a role in ensuring that other employment is created or encouraged in crofting areas—perhaps remote crofting areas—so that crofters receive income from other forms of work. Working a croft will not on its own make you very rich. I wonder whether the witness from HIE could comment on that.

Could the witnesses from the crofting communities comment on how we might design a points system or otherwise prioritise the best people to tenant crofts?

Allan MacRae: Our trust welcomes the desire to create new crofts. We have seen several instances of huge areas of land in the Highlands being taken into community ownership. In some instances, that has involved non-croft land. It is important that such land is redistributed to those who have the appetite to use it. I hope that that will happen in future. If we are to keep our communities alive, young people must have access to the land; that will be fundamental to the future well-being of communities.

I believe in personal enterprise; you can have too much planning by the state. Rather than the state dictating how land should be used, people should have access to the land and should be encouraged to work on their own enterprises. Crofting generally allows that, and we want a lot more of it.

Alistair Maciver: I would welcome a points system—it seems to have a lot of merit—but I wonder how it would be applied in practice. Who would draw up the points system, and how much local input would there be? Who would make the nasty decision to accept Mr A before Ms B, or whatever? Those are my reservations. The idea is good, however.

I will talk a little about something that has always been a hobby-horse of mine. By and large, crofters used to be part-time crofters and part-time posties, roadmen, dustbin operatives and so on. Unfortunately, such opportunities have largely disappeared. There are now very few posties and even fewer roadmen and dustmen. Consequently, there are no opportunities. The Forestry Commission also offered outstanding employment opportunities for crofters on, if you like, crofter-friendly terms. Those opportunities have all disappeared and it is not possible simply to snap your fingers and bring them back.

I am interested in the suggestion that HIE could investigate the possibility of creating some employment. That would at least make it easier for those who wish to get into crofting to do so and to have another job of some sort, whether part time or not.

At present, we import workers from eastern Europe. At the same time, youngsters are leaving the local area to find jobs elsewhere. There must be some means of bringing the two together.

Councillor Durham: I want to offer one word of caution about points systems. The Scottish Executive Environment and Rural Affairs Department uses points systems for many schemes and they can become very controversial. They do not always produce a result. Ultimately, in any points system there will still be a value judgment to be made because there will often be two or three applicants with the same number of points. I believe that that is where the Crofters Commission could and should regulate proactively. If a system of points is used to choose a crofter for an available croft, somebody has to make that judgment; in my view that should be done by the commission in a proactive way. Also, the success of a points system will be judged by how points are allocated.

Maureen Macmillan: Perhaps George Campbell can answer my question about jobs.

George Campbell: I can answer both questions. I do not think that a points system is a universal solution. As the Crofters Commission's evidence states, such a system was piloted in the Western Isles—I think that it was in Lewis—and was not a huge success because the community did not have the appetite for the responsibility. It is instructive that in some of the community buy-outs, in which the community has the enhanced confidence to buy into its future, people are prepared to take on that responsibility. That is encouraging. There are opportunities for a points system to operate if a community has sufficient self-confidence to operate it; the mature communities are doing that.

There are other examples, such as the Stornoway Trust, which has been working for a long time in the Western Isles as a community landlord. It has not operated a points system, but it has been working for the community benefit with that model, and there have been long-term benefits from that process. There are opportunities for that type of approach, but they are not universal.

In terms of the economy, HIE is pursuing a number of strands. We launched a strategy last year called "A Smart, Successful Highlands and Islands: An enterprise strategy for the Highlands and Islands of Scotland". That is a fairly long strap-line. The strategy does two things. First, we are working on large, strategic projects, such as the Arnish yard in the Western Isles, which we hope will create large-scale jobs. Secondly, we are working at a local level with a strong emphasis on remote or island communities—Islands are very much an emerging theme for HIE. We are trying to work at a low level to offer support to individual operators, as the level of self-employment in the Highlands is much higher than in the rest of the UK. We are also encouraging the dispersal of public sector jobs—they have gone to Tiree and other places. There are a number of strands, and I am confident that our strategy, in the longer term, will achieve its goal.

Councillor Durham: There is the potential to operate a points system for house sites as well as for crofts.

Maureen Macmillan: Indeed, there is a points system for local authority housing. Such systems are used; the problem is who decides what the points will be awarded for. That might best be decided at the local level.

Allan MacRae: If a person gets a croft tenancy, they must be able to create their own opportunities. The state cannot do everything for us—the world does not owe us a living. Many people in the Highlands make their own opportunities. If you look in the telephone directory for Assynt, you will see a remarkable number of

businesses listed, many of which are run from crofter households.

The Convener: Four members still want to ask questions in this slot. I will let them all speak, but they can ask only one question each. I advise them to keep their questions fairly swift, otherwise we will not finish our evidence session today. We have yet to hear from the minister and her officials, who will be here right at the end of the meeting.

Nora Radcliffe (Gordon) (LD): I return to the idea of making local policy. A point that has come from much of the evidence that we have heard is that crofting is not the same everywhere—it is organised and run differently and operates within different parameters in different parts of the crofting counties. I was interested to note in the Assynt Crofters Trust submission that Mr MacRae is uneasy about the proposed arrangements for different local policies to reflect different local needs. I invite people to comment on the desirability or otherwise of tailoring policy to local needs.

14:45

Allan MacRae: I am very uneasy about that.

Nora Radcliffe: Will you say more about why?

Allan MacRae: For a start, I am not sure who will decide those local policies. That is a matter of concern. There should be a level playing field for crofters wherever they live. I am frightened that some policies might discriminate against the interests of crofters, but that depends on who makes the policies. That is all I have to say.

George Campbell: In our submission, we welcomed the idea of making local policy. The process by which area policies will be defined is as yet unclear. As Allan MacRae suggests, it is the detail of the policy that will be important.

You are right that there are huge differences between crofts in Shetland, Invernesshire, Orkney and wherever else. It makes sense to reflect those differences when we pull together local policies.

Councillor Durham: I still take the view—I think that it is also Highland Council's view—that the Crofters Commission would be the right vehicle to administer those policies in consultation with the local authority, be it Highland Council, Western Isles Council, Shetland Islands Council or Orkney Islands Council.

Nora Radcliffe: May I pursue the matter a little further?

The Convener: Very briefly, Nora.

Nora Radcliffe: I want to know how we should define a local area; should it be broad brush rather than very local?

Councillor Durham: If an area were defined very locally, the policy would be complicated and difficult to administer. If you want to make a broad-brush definition, I suggest that the mainland, Western Isles and Shetland be included. If we were to break down areas into Invernessshire, Wester Ross and Sutherland, for example, policy would become very difficult to administer and open to comments about whether it was fair.

Allan MacRae: My fear is that if everyone had to adhere to a local policy, it would stifle local enterprise. I do not agree with the proposal.

Richard Lochhead (Moray) (SNP): Let us return briefly to the big picture. Various concerns have been expressed to the committee that, although we are considering the Crofting Reform etc Bill, the Government does not have a clear vision for crofting in the 21st century. What are Alistair Maciver's and Allan MacRae's responses to that? Do they think that the Government has a clear vision that has been explained properly as background to the bill?

Alistair Maciver: I disagree with that. My first response is: where is that vision? I have certainly not been able to see it and I do not think that many of my crofting colleagues have been able to see it either. As I said bluntly in my submission, the major reason for all our concerns is that the bill is just a hotchpotch. My problem with it is that it does not seem to point to any vision. I am sorry to disagree with you, but—

Richard Lochhead: It is not my view; I was just asking for a response to the argument.

Allan MacRae: It is difficult to legislate for a vision of future. It is far more important to ensure that communities have the freedom to make the most of their opportunities and that things develop in their own way. A lot of the proposed legislation is totally unnecessary, as I have said already. That is all that I can say.

Richard Lochhead: What do you think the committee should do with the bill?

Allan MacRae: That is a very tough question.

The Convener: That is why it has been asked, I suspect.

Allan MacRae: There are some good bits in the bill, but an awful lot of it is unnecessary. There can be too much management. The Crofters Commission already has plenty of powers to deal with most issues. That is my submission.

The Convener: John Farquhar Munro is next on my list. Please stick to one topic.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I will backtrack a bit to the question that the witnesses themselves posed, on the distinction between a planning application and

a decrofting. Which comes first? It is a chicken-and-egg situation in my view. When someone makes a planning application, it is insisted that the land must be decrofted. If they decroft first, there is no guarantee that they will get planning approval for that piece of territory. There is an anomaly there.

I have heard the evidence, and it is pretty powerful stuff. Why do we need the Crofting Reform etc Bill?

Alistair Maciver: I do not think that I could answer that one.

John Farquhar Munro: Is the bill necessary?

Alistair Maciver: Very briefly, no.

Allan MacRae: I suspect that most of it is not necessary.

The Convener: Let us keep going. What is George Campbell's view?

George Campbell: I am not a lawyer, so I do not know to what extent it is necessary. The agreement that has been expressed this afternoon and the evidence that we have submitted suggests that there are good elements to the bill. I do not know to what extent they can be incorporated in the existing legislation. Even if they can be incorporated readily, it does not seem to me that that would remove the need for a new bill, but I am not really qualified to comment on that.

John Farquhar Munro: So you are neutral on that.

Councillor Durham: I will be supportive of the bill if it means that, by the end of the process, we will have a more effective system for managing crofting in the seven crofting counties of the Highlands and Islands. From my perspective, and from that of the council, that will be to the good of the local folk.

John Farquhar Munro: We have heard evidence to suggest that sufficient regulations are available to the Crofters Commission, that those regulations have protected crofting for the past century and that there is no reason why they should not continue to do so, were the commission to apply them.

Why do we not restructure the Crofters Commission and appoint 50 per cent of its members from among the crofting townships? If people were elected by the townships, that would mean that at least a certain percentage of those on the commission would understand crofting.

Councillor Durham: The council would support that if it meant that we had a proactive and respected Crofters Commission. The commission is currently viewed as reactive and it does not get respect. Whether that view is true or not is neither

here nor there—that is the perception. At the end of the process, the commission needs to be in touch with crofting, it needs local representation on it and people need to have faith in it.

The Convener: I suspect that that question will also be addressed by subsequent panels of witnesses.

Eleanor Scott (Highlands and Islands) (Green): My question is for both HIE and Highland Council. Both your submissions refer to working with the Crofters Commission. How do you currently work with the commission, and how do you feel you should be working with it?

George Campbell: At present, our main point of contact with the Crofters Commission is through the new entrants scheme, which the HIE network funds, but which is delivered through the commission. There is also informal contact between the commission and HIE. However, to return to our earlier point, we lack a structured framework within which we can work together. That is the point that we make in our submission when we talk about the need for a coherent vision for crofting. We need a framework within which we can slot into the process. With the commission assuming a more developmental function, there will be potential for overlap and confusion, from a crofting perspective as well as from ours.

Councillor Durham: The simple answer is that we work with the Crofters Commission as part of the planning process, when there are crofting applications, and in relation to forestry. The council maintains a close relationship with the commission on many matters in Highland, but those are the two issues on which the work of the two bodies comes together. I have just been passed a bit of paper, which says that we work with the commission on technology services, roads, schools, planning and agriculture. We have a good working relationship. The Crofters Commission is based in Inverness, so there is considerable contact, which we hope will continue.

The Convener: That seems a good point at which to end session 1. I thank the witnesses for taking the time to come and have a go at answering all the questions—that is very much appreciated. It was useful to have your written evidence in advance. We will have a short suspension to let panel 1 go and panel 2 arrive.

14:56

Meeting suspended.

14:58

On resuming—

The Convener: I welcome our second panel of witnesses, who are from the Crofters Commission.

We have Shane Rankin, the chief executive; David Green, the chairman; and Drew Ratter, a board member. As colleagues have noted, Drew is being recycled this afternoon—he has already appeared before us wearing a different hat. I thank the witnesses for their helpful written submission, which has been circulated to members. We will go straight to questions. I feel like saying, “Fingers on the buzzers.”

Nora Radcliffe: I will plunge straight in. Why is there such a strong perception among crofters that you have not been exercising your existing regulatory powers and duties?

David Green (Crofters Commission): Regulation is a complex subject that many people misunderstand. Many people think that the outgoing person does not assign the croft, but that the commission does that. There is no excuse for thinking that. However, that does not mean that we have not been regulating over the years—we take our regulatory role seriously. We have exceeded our target on absenteeism by more than 10 per cent and we take a firm view on decrofting. Last year, there were seven applications for whole-croft decroftings, but we approved only three. The year before that, there were four applications for whole-croft decroftings, but we approved only two. We take a consistent approach to non-family assignments, contrary to what the committee might have heard. We have a firm policy in place that we try to apply rigorously. We have been trying to create new crofts.

A perception exists, perhaps because of where the commission came from, that the body is a relatively secretive one in Inverness. I do not know whether the fact that it did not meet in public is part of the reason for that perception, but the present board has opened up the commission to ensure that our business is in the public domain. We try to justify our opinions and give evidence to those who do not get the decisions that they want.

15:00

Drew Ratter (Crofters Commission): Regulation is complicated and difficult. It can work with a group of people who want to be regulated and who have internalised the regulation, but it is hard to impose it on people. Up to a point, we need regulation by consent, especially when money or items of value are involved because otherwise teams of lawyers get involved. If people cared to find out about some of the regulatory cases that have dragged on for years and years, they would realise just how difficult regulation is.

The debate on the issue has gone a particular way. When the present process started—about five years ago—there was an apparent threat to the Crofters Commission, which resulted in a

tremendous upsurge of demand to retain the commission among assessors and crofters. For a brief period, the Crofters Commission was presented as a sort of heroic body. We see the surface, but there is more to the matter than that. As members will know, with the European convention on human rights and the miles of litigation that surround the average croft, regulation is hard.

Nora Radcliffe: It is good to get on the record that you have been meeting targets and achieving something.

David Green: An expectation often arises that we can do things that we cannot do. In one assignation case with which we dealt, in the end people were happy when the commission took the decision, because the commission was far enough removed from them. I am all for local decision making, but the local regulatory pilots that we tried did not work. The primary reason for that was that the decisions were too close for comfort for many local people. For example, many of the people who were involved may have been related. Therefore, the big bad body in Inverness takes the decisions.

The Convener: On a specific point, how many times has an owner-occupier been required to submit a proposal to relet since the right to buy was introduced? That question was posed in a submission to the committee.

David Green: I do not know that off the top of my head but, in the past 12 months, we have made 12 owner-occupiers relet. I do not have the figures for the years prior to that. Since the Taynuilt case has brought the issue to the top of the agenda, the commission has reacted and taken more positive action against absentee owner-occupiers.

Maureen Macmillan: If you can do that under the Crofting Reform (Scotland) Act 1976, why do we need the proper-occupier legislation?

David Green: The present picture is rather confused. People do not understand that they are landlords of vacant crofts. Although the commission has some powers in that regard, they are limited. For instance, an owner-occupier can subdivide their croft without letting us know beforehand, although they must do so afterwards. They can sell off bits of the croft and asset strip and we cannot control that, although we have certain powers. The background is that, when people buy a croft, they think that the powers of the Crofters Commission have nothing to do with them and that they can do what they want. The present rules and regulations say that people who buy a croft must inform the commission within a month, but that rarely happens. The convention of leaving owner-occupiers alone arises because of the 1976 act.

Maureen Macmillan: You have told us how you have been dealing with absentee crofts and cases in which crofts are not being worked properly. Are you on top of the problem, or is there still a lot to do?

David Green: We will always have to carry out work on absentees. The absentee review that we carried out a couple of years ago suggested that there were 500 absentees, but I think that at the moment there are about 1,700. That situation will continue as people from Barra, Wester Ross or wherever go to Glasgow to try to earn an income.

As a result, dealing with this issue is extremely difficult. For a start, there is no such thing as an overall percentage figure for absentees. For example, absenteeism runs at 25 per cent in Wester Ross and at only 3 per cent in Caithness, and our approach has to reflect the fact that there might be more of a problem in Wester Ross than in Caithness.

Maureen Macmillan: I presume that your approach is to ensure that the absentee crofts are sublet.

David Green: We try as far as possible to ensure that active working takes place on the croft. I would describe our approach as firm, because we have to get some result, yet sympathetic, because as I think Dr Michael Foxley said the umbilical cord of crofting is very strong. Someone who leaves an area to earn an income in Glasgow, America or wherever often wants to return to his or her croft, and we have to balance that aspect against the need to make the croft available to young people who want to get into crofting.

Maureen Macmillan: But if a croft was sublet, it would not come with a house. As a result, a young person could not work the land because there would be nowhere for them to live.

David Green: In order to make a living, they could apply for a crofting housing grant to build a house on the croft.

Maureen Macmillan: So that is a possibility. Thank you.

Mr Brocklebank: A couple of witnesses have wondered whether it is possible for the Crofters Commission to play the regulatory and development roles proposed in the bill. Do you think that that is possible?

David Green: Yes, as long as the correct procedures are in place. After all, in the past, councils played both a planning and a developmental role. It is important that we have a developmental as well as a regulatory role because we can use our contacts with grazings committees and our regulatory powers to find innovative ways of, for example, creating land for

the local village hall or to introduce other initiatives.

However, it is also important not to have a cluttered landscape out there. As a result, we have discussed with HIE the possibility of carrying out a proper mapping exercise to ensure that both our organisations know what they are doing. The bottom line is that our contacts with local crofters must be useful in assisting development. We can use what might be described as the crofting niche without treading all over other people's activities. After all, the worst thing that we can do is to confuse crofters or anyone else out there, and there is an obligation on us to make the backroom stuff as simple as possible to ensure that those people have to deal with as few people as possible. Local development staff who are involved in the initiative at the edge and in other local partnerships in Tiree and elsewhere are playing their role by putting forward the crofting case.

Mr Brocklebank: But does such an approach not make people think that the whole thing is a bit of a hotchpotch? On the one hand, you appear to want to be a regulator while, on the other, you seem to want to be a developer. As Alasdair Morrison wondered, is it possible to have a free market within a regulated system? Is it right and proper for a crofter to buy his croft for 15 times the annual rent and to sell it five years later for a massive sum of money? It could be argued that it is right for him at the back end, because he is entitled to develop his asset, but is it right for him to do so given that the matter is regulated at the purchase end? You seem to be wrestling with the difficulty of deciding whether you are a regulator or a developer.

David Green: The cornerstone of our work is regulation, but other agencies have brought us in on certain developments because of our crofting contacts.

On the value of the tenancy, the problem that you highlighted has concerned the commission for a number of years and has been around since long before the introduction of the bill. I have to say that I do not know what will happen in that respect if the bill is passed. Twenty or so years ago, I bought my tenancy as a non-family assignee, which raised a number of issues. The commission once had a policy of giving priority to young local entrants, but we ditched that when we were advised that it was against European rules. Moreover, at one time, we took into account the tenancy's market value, but we received legal advice that we could not do so.

I appreciate that there is a difficult balance to strike. If I am developing a croft at home, have built a steading for £10,000 and have spent £5,000 on fencing, will I give that croft away for the

£4,000 to £6,000 that was mentioned previously? The bottom line is that crofters have the right to buy. That is the difficult aspect of the market value situation in which we find ourselves. We must use our regulatory powers to free up more crofts and to ensure that there are more opportunities for young folk. It may be an imperfect world, but it is the world in which we live.

Mr Brocklebank: Might the length of time for clawback be extended from five to 10 years? Alternatively, in the making of new crofts, might we take away the right to buy?

David Green: I do not think that a new croft would be created in the Highlands and Islands unless we took away the right to buy, as the bill proposes. That is a good incentive. The Gigha community and others have told the committee that they would not create new crofts otherwise. Why should they, given that the crofts would just be sold on and they would lack control?

The question about clawback is interesting. There is no evidence that what you suggest would have an impact. I am not clear about whether it would result in a disincentive. As well as creating another classification of crofter in a landscape that is already confused enough, it might present a disincentive to the new crofter, who would not have the same rights as others. The issue would be whether they could work their way around a clawback period of five or 10 years. It is an interesting idea, but I remain to be convinced about it.

Drew Ratter: There is a separate point to be made. Like many other people whom I know, I have a traditional croft that has been in the family for a long time. Neither the state nor any landlord has played any part in putting anything on the croft. It started off as a bit of bare hillside. Whatever has been done on the land has been done by the tenants. I do not believe in clawback at all, unless the croft is nothing but bare hillside.

That does not necessarily apply to newly created crofts. Newly created crofts are starting from a totally different point. If the land has to be acquired, capital is being applied from somewhere to get it in the first place. The work to bring the land up to the point at which it can be let to new crofters will be funded from somewhere. A great deal will have to be put on the new crofts before they remotely resemble crofts. In days of desperation, people were told that they were moving and that they would occupy a particular piece of hill from now on. They did not have much choice. They started building houses and dykes, tilling, gathering seaweed and so on. That is not how new crofts will be created. The situation is very different.

Mr Morrison: In response to Ted Brocklebank, David Green talked about the conflict between the

regulatory role and the developmental role of the Crofters Commission and cited the example of local authorities. There is a big difference between local authorities and the Crofters Commission, as there is democratic accountability in local authorities.

In paragraph 2 of your submission, Mr Green, you say:

"The Commission welcomes the general thrust of the Bill and the opportunities it brings."

There is a surprise. As you know, you are in the enviable position—some would say—of having your colleague Shane Rankin, who is sitting on your left, as the chief architect of the bill. Do you think that it makes for a proper legislative climate and atmosphere around the bill to have the chief executive of the Crofters Commission playing such a pivotal and important role in the composition and eventual passage—if that happens—of the bill?

David Green: I do not want to take issue with you, but you called Mr Rankin the chief architect of the bill. As I recall, he did not come into his present role until after the bill was published and we had responded to it.

Mr Morrison: I refer you to the comments of the bill manager, a fellow by the name of Mike Watson, on the first day of evidence taking. My intention is not to slight Shane Rankin or to doubt his abilities—I am talking only about process. Do you think that having your chief executive as the lead man on the bill, as Mike Watson said, is conducive to a proper atmosphere and good, open governance?

David Green: In the first place, I do not think that it was Shane Rankin's intention to be in the lead role when he put himself forward for that job. Frankly, I think that he has received unfair criticism for trying to do his job. He is employed by SEERAD to do his job and he is carrying it out to the best of his ability. There may be a perception, as Sir Crispin Agnew pointed out, that his involvement in drafting the bill could put him in a difficult position in future if the legislation is challenged. However, as far as I am concerned, Mr Rankin is doing a good job as chief executive of the Crofters Commission and has carried out well the other job that he has been asked to do in SEERAD.

15:15

Mr Morrison: I note those comments. Ultimately, of course, the decision is for ministers rather than for the chairman of the Crofters Commission.

I am sure that the panel has listened to or read the evidence that we took in Edinburgh, Stornoway and Oban and listened to the evidence

that we have heard today here in Inverness. During those four sessions, we have heard some interesting comments on the bill from the foremost historian in the Highlands and Islands, political commentators who have been commenting on crofting for three or four decades and practitioners. Today, we heard the bill described as a hotchpotch. How have all those people managed to get the bill so spectacularly wrong and how have the Crofters Commission, Rhona Brankin and Ross Finnie managed to get it so spectacularly correct?

David Green: The bill contains a lot of good things. Just round the corner from me in Assynt, there are people champing at the bit to create new woodland crofts—I refer not to the Assynt Crofters Trust but to the Assynt Foundation. Whether or not I am part of the commission in future, the bill contains good provisions that will give the commission much-needed powers to tackle neglect, which we can do at the moment only on the intervention of the landlord. The bill will also provide us with useful powers to tackle what one might call the rogue shareholder. It will also give us powers to create a more streamlined regulatory system, which must be a good thing as it will free up staff within the organisation to do other work. All in all, there is quite a lot in the bill.

In addition, the bill has highlighted—I say this regardless of whether I am part of the commission's future—the potential problem in respect of planning, which was discussed previously. The bill has highlighted the difficulty that the commission has not been as involved as it might have been in the local plan process.

Mr Morrison: Is it your view that a possible contributory factor to the specific and direct criticisms of the Crofters Commission is that people simply do not understand what is happening?

David Green: A whole range of factors must be taken into account. That is not the only factor, as both you and I know, but I think—

Mr Morrison: I was paraphrasing what you said.

The Convener: I do not want this to become a dialogue just between Alasdair Morrison and David Green. The point that Alasdair Morrison was making was about the perception of the bill. We have had different views from different parts of the country. To what extent does the level of dissatisfaction simply reflect the fact that people are not happy and to what extent is it based on evidence? That is what we are trying to tease out.

David Green: We employ a lot of discretion in the decisions that we make. However, the only judgment that has been passed on our hearings process was made by the Council on Tribunals, which gave us a glowing report last time. Judged

by what we do rather than on the perception of what we do, I remain content.

Rob Gibson: The bill's financial memorandum makes no allowance for the costs that the commission will incur in tackling misuse or neglect of crofts. What is the commission's assessment of the resources that are needed to enforce the requirements of the bill?

David Green: We do not have an assessment of how much is required, but we appreciate that the commission has been set a challenging and difficult task. In dealing with neglect in any set of circumstances, we need to be extremely careful to define neglect in a way that ensures that any case that we pick is fairly watertight. That said, it is important that we are given powers to tackle neglect so that people out there realise that they cannot sit back and, as it were, watch active neglect take place.

Rob Gibson: Does "active neglect" need to be more firmly defined? Is it defined in the bill?

David Green: "Active neglect" is not defined in the bill, but "purposeful use" and other forms of working the croft are defined there. Through the local advisory panels, we would look to crofting communities to give us examples of neglect, on which we would take action. It is important that we have the power and take action, because not enough active use is made of croft land in the Highlands and Islands.

Rob Gibson: You have said that more activity is required to deal with absenteeism. Have you had schemes that have been watered down because of a lack of finance and staff?

David Green: The capacity of any organisation is finite. We have directed some resources to the absentee initiative over several years. An awful lot more resources could be thrown at it to achieve more results, but a balance must be struck between what the commission does as a regulatory authority and its other tasks. We have tackled the absentee situation appropriately and correctly.

Rob Gibson: Given that about 1,700 crofts are affected by absenteeism and perhaps many more are neglected, the prime task is to achieve the balance—to which witnesses have referred—between the creation of new crofts, which is good, and taking up the slack in existing crofting communities, but that has not been achieved. As the committee decides whether the bill is good in principle, we should have a clear idea of whether the money that is provided will tackle that task.

David Green: That is fair comment. We set and work to targets that are agreed with SEERAD. As I said, we exceeded our target in the past year. We can always do more, but a balance must be struck

between doing what we can to tackle absenteeism, which is a protracted and difficult process, and what we do elsewhere in the organisation.

Rob Gibson: The 50-year backlog in having an up-to-date register and in dealing with mapping issues is not your fault or the fault of anybody in particular, but the cost of making the system work appears to have been underestimated. If that is the case, are you asking for more money and more staff?

David Green: For several years, board members have said—at least Drew Ratter and I have—that mapping is a big miss in the process. We certainly require a proper map of the crofting counties. That is a difficult task. We have a pilot geographic information system in place and considerable resources will be required for that. Only when we have done a proper mapping exercise will we be able to liaise properly with planning authorities, so that they know where the crofts in their areas are.

Rob Gibson: Does the bill not say that crofters will have to pay for the maps? Is that not entirely wrong?

David Green: If I recall correctly, when I had to produce my integrated administration and control system map, I had to pay for it. That might not be correct.

The Convener: The point that Rob Gibson makes has arisen at just about every session. Rather than reinventing the wheel, could the situation be short-circuited by using applications for agricultural grants as evidence?

David Green: Five years ago, we asked for IACS maps to be used, because we felt that they formed a perfectly valid database. However, we were told that they were confidential and could not be used. Is that correct, Drew?

Drew Ratter: Loads of information is in various Government agencies and silos. If that were knitted together properly, we would have almost the whole story, and it would not take long to complete the story.

As far as I can see, confusion has arisen because the Data Protection Act 1998 was initially interpreted rigorously, which denied the Crofters Commission and others access to IACS information. That does not seem sensible, as the payment of public money is based on that information. I understand that some of that information could now be accessed by making a freedom of information request. Perhaps that is something for the committee to clarify.

The Convener: You could say to the people who provided the information in the past, “We could charge you, or you could just release the information.” That might concentrate minds.

Drew Ratter: Indeed it might.

The Convener: That information is helpful.

Shane Rankin (Crofters Commission and Scottish Executive Environment and Rural Affairs Department): I am holding up an example of the GIS work that the commission has done in the past couple of years. It draws on a series of sources of information, including the agricultural information from SEERAD. It makes a start towards what the bill anticipates—a map-based register. The GIS project has been undertaken largely from existing resources in the commission and has built on existing information sources. It seeks to work towards the sort of register that people want.

Rob Gibson: How many staff are working on the mapping?

Shane Rankin: One. And a lot of computers.

Richard Lochhead: Many of the crofters to whom we have spoken have voiced serious concerns about the bill. If the bill was withdrawn, what good things would be lost that could not be introduced through existing legislation?

David Green: New crofts. Woodland crofts. There is tremendous potential for new crofts throughout the Highlands and Islands. New crofts have made a big difference on islands such as Jura, where they have revitalised the island in a way that could not have been achieved by any other development tool. That is one redeeming feature of the bill. There are other features, such as tackling neglect; perhaps getting some sort of clearer relationship between the commission and the planning authorities; and more streamlined regulation, which can only be to the advantage of crofters.

Richard Lochhead: Would primary legislation be required to introduce all those things? Are you saying that existing legislation could not be used?

Drew Ratter: The Crofters Commission started in 1955. There have been some modifications since, but initially it was a tool of the Scottish Office and contained civil servants who were employed by the Scottish Office. When the Scottish Parliament came into being, somehow the commission became part of SEERAD. It does not have a clear definition at the moment. During the past five years, at the behest of SEERAD, we have been attempting to put the structures in place to turn it into a sort of a shadow NDPB. If the bill were passed, it would be an NDPB, but at the moment the commission is a strange animal. The commissioners still have full executive power but, because of the relationship with the Scottish Executive and because we are modernising—again at the behest of the Executive—they do not exercise it. The commission is becoming what it

would be if the bill were passed. I would not like to say whether new crofts can be created without primary legislation. It would require primary legislation to redefine the commission so that everyone can contentedly say about it, "Well, at least we know what it is." That is where we are at the moment. That is a fundamental issue.

Shane Rankin: By withdrawing the bill, quite a lot of basic things would be lost, such as scope to tackle interposed leases; local policies; and the streamlining of regulation so that assignments can be confirmed at any time of the year rather than twice a year, which is a huge delay for crofters who want to transfer their crofts. The creation of the strong, independent body that the NDPB structure will allow requires primary legislation. There is a raft of practical issues in the bill that cannot be introduced any other way.

David Green: The bill will also clarify for the public, which sees us as one arm of SEERAD, what the commission is. It will be a separate body, separately accountable, with separate targets, its own finance and its own clear, concise remit to promote and develop crofting.

Shane Rankin: One final issue is the development schemes for large-scale developments in the Western Isles and Shetland to allow wind farms to benefit crofters. I mean development schemes in the sense also of the development funding that the commission provides at the moment. At the moment, the commission puts out £3 million or so in agricultural grants every year. However, because those are schemes that are managed by SEERAD and not by the commission, the targeting of that money and of those schemes requires legislation. Legislation will allow the commission to decide what grant schemes to run, how to operate them, how to target them and how to change them according to needs and pressures. That cannot happen without legislation.

Richard Lochhead: I am not really arguing about the need for legislation; I am just talking about primary legislation in the form of the bill. So you are saying that primary legislation is required for those things.

Shane Rankin: Yes.

15:30

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I would suggest that the people who make the crofting system work are principally the staff of the commission, who are in the engine-room of whatever laws we have, current or new. Most of the staff—43 out of 50-plus—are based at the commission's headquarters in Inverness. There are four part-time staff at Knocknagael farm and a few staff in Argyll, the Western Isles and

Shetland. Over the past year, I have met union representatives of the staff to try to find out what their future is, because they do not know.

My question is for Shane Rankin and David Green. In its submission, PCS north of Scotland states that, since 2002, it has not been consulted at all on the key consequence of the legislation for staff, which is that they will lose their civil service status and the raft of rights and opportunities that that entails. Do you accept that, since 2002, there has been no consultation with staff at the commission on the matter?

David Green: I will speak from the board's point of view. We have not been asked to consult staff on the issue. By and large, staffing is an operational matter for the organisation. I have flagged up to SEERAD that there are a number of issues that need to be addressed in the future, preferably sooner rather than later, regarding staff, transition arrangements, training, location and so on. The board agrees that we should address those matters now, rather than have them come as a surprise when the new organisation is set up.

Fergus Ewing: Your answer indicates that there has not really been any consultation.

David Green: I was speaking from the board's point of view.

Fergus Ewing: We will ask the minister about the issue later, unless Mr Rankin can tell us.

Shane Rankin: The assertion that there has not been any consultation since 2002 is not quite right. There have been discussions from time to time, both with local officials and with national officials. There were a number of discussions up to 2002, because there was a flurry of anticipation that the bill, work on which started in 1999, would be in place by 2001 or 2002. After 2002, the proposals in the bill that relate to staff did not change much.

Fergus Ewing: I asked specifically whether there was consultation on the loss of civil service status. I am aware that there have been other discussions, but none about that key issue. The bill will take away the staff's civil service status. I understand that that will mean that transfers within the civil service will be lost and that the Crofters Commission will become the smallest quango in Scotland, with very limited promotion prospects. There will be lower pay rates, especially for those who do the least well-remunerated jobs. In its submission, which you will have seen, PCS north of Scotland indicates that those on grade A3 receive between £1,000 and £2,000 less working in quangos than they receive in the civil service. Is the onus not on the bosses to speak to the staff about those changes? Is it not a matter of decency and basic courtesy to engage the staff in a proper consultation about their future?

Shane Rankin: If nothing changes, there is nothing to consult on, even if that is the case over years rather than months. There is no point in going on about how the loss of civil service status will affect people's rights. If that was discussed considerably before and there has been no change to what was proposed, why should we keep talking about it?

Fergus Ewing: There is a change. The change is that staff will cease to be civil servants.

Shane Rankin: That was also the case in 2002. There has been no change.

Fergus Ewing: When other quangos such as the National Library of Scotland and the Royal Botanic Gardens were set up—I have the relevant acts of Parliament with me—detailed provision was made in the bill that protected the rights of employees of those bodies. Why is the Crofting Reform etc Bill silent on the position of Crofters Commission staff? Does that not mean that highlanders are getting second-class treatment compared with Scottish Natural Heritage staff, who get handouts of £20,000 to come up to Inverness from Edinburgh?

Shane Rankin: The provisions of the bill reflect the best advice of the public bodies unit of the Executive. They also reflect common understanding by the national officials of the trade unions. There seems to be a disagreement between the local and national officials about what is in staff's best interests. The national officials seem to take the view that putting all the detail into the bill is not in staff's best interests. I suggest that you raise the issue with union officials and the minister.

Fergus Ewing: Do you accept that specific provision was made for the staff of those other quangos? A statutory procedure was set out in writing and gave them other job offers. We are dealing with people—nearly 50 people, many of whom are my constituents—who have not been consulted about the matter despite the fact that their good will, good nature, good temperament and positive approach to the task that we and you are going to give them is essential. I put it to you that the best thing to do would be to allow those valued staff to remain as civil servants and end the uncertainty about that right now.

David Green: There is a wealth of experience and knowledge that the present board values and that I am sure the future board will appreciate.

The Convener: Those questions can be put to the next two panels of witnesses. We will leave it at that.

Nora Radcliffe: I have a question on a topic that has not been covered.

The Convener: I will let you ask it if it is about one topic and is expressed briefly.

Nora Radcliffe: Will the witnesses comment on multiple tenancy and the desirability or otherwise of the fact that the bill contains provision for the division, but not the amalgamation, of tenancies?

David Green: The present rules are that the landlord's consent is required to subdivide a croft. As you know, the bill eases that up so that, if a crofter has two sons, two daughters or whatever, they can subdivide with the commission's consent. That is to be welcomed because it is an interesting proposal that could help development in the crofting counties to keep young highland families in the area.

Multiple tenancy has not been addressed in the bill. It is a difficult issue to address in legislation because, if I had six crofts—which, for the record, I do not—I would be concerned if any legislation was to try to take one of them off me.

Shane Rankin: I suppose the argument is that, if crofts were to be formally amalgamated into a multiple holding, there would be much greater difficulty in taking them apart at some point in the future because we would have to go through the subdivision process. Therefore, there is a tolerance of multiple holdings. It is pragmatic, but that tends to be the approach that is taken and it is why the bill does not allow for amalgamation.

David Green: The trend in the 1960s and 1970s was to amalgamate crofts, which ended up with fewer people and more land. The trend nowadays is to try to have more people and help to sustain more communities. We do that by subdivision rather than by amalgamation.

Drew Ratter: We came to where we are today because of the post-war United Kingdom policy of food security, which drove the push towards the viable unit. I remember that, when my father got going properly in the 1960s, a holding with 100 yows and 12 cows was considered a viable unit and it was possible to make a living on it. However, the viable unit was a mirage: it just kept going further and further away until we ended up with enormous units that are still entirely dependent on subsidy.

It should be remembered that the drive to create larger and larger holdings has gone away. It was perfectly reasonable and the state encouraged us to do it. It said that if we could get more land, we could keep more sheep and get more subsidy, so we did. However, that driver has gone away so there is less pressure on that front.

In Shetland, it is not inconceivable that, over time, some of the big conglomerates might end up being broken up entirely voluntarily. If we have a policy of creating new crofts, perhaps something can be done on that as well.

The Convener: That is helpful. We can see the conflict between having a big enough unit to make money and survive and trying to keep the chance for as many local people as possible to work the land. It is a tough balance and there are different suggestions of how to achieve it.

I thank the witnesses for answering our questions. We will now have a coffee break, which I would like to be no longer than 15 minutes. That relies on everybody getting through the coffee queue at the back door fast and getting back out here in time. It is not a major networking opportunity—there has been much of that already, which I welcome—just an opportunity to get coffee.

15:39

Meeting suspended.

15:56

On resuming—

The Convener: I welcome Keith Aitchison and Jackie Forsyth, who are members of the Scotland north branch committee of the Public and Commercial Services Union; and Archie Macnab, who is the Prospect office representative on the Crofters Commission staff.

As the committee has already received and read the witnesses' useful written submissions, I will go straight to questions.

Rob Gibson: Instead of asking about your submissions, I want to pick up on a point that was raised with the board of the Crofters Commission. Can you give us a bit more detail about how you do your job? Does the Crofters Commission have enough staff to carry out its work? To what extent do the board and the rest of the staff discuss ways of dealing with crofting problems?

Keith Aitchison (Public and Commercial Services Union): First, I thank the committee for inviting us to give evidence. We greatly appreciate the opportunity.

Secondly, I should advise the committee that I have played a part in the bill. For three years ending March 2005, I was on transfer to SEERAD, where I worked on the white paper and then on the first draft of the bill, translating policy intentions into instructions for solicitors. I played no part whatever in discussions on the position of staff.

The question on Crofters Commission resources is a bit beyond the brief that our branch has agreed. However, unions are always concerned about the workload on staff and the direction of resources. We are not entirely sure how the management and the board take decisions on those—we are certainly not involved in them—

although we make representations to management. However, I cannot say that we have been successful.

Archie Macnab (Prospect): As Keith Aitchison has pointed out, the unions are constantly concerned about resources. After all, there is a lot of work to do out there and, if the bill is passed, that workload will only increase. Prospect and PCS will want to discuss such issues with the future board of the commission.

Rob Gibson: The financial memorandum gives no indication of this, but has there been any attempt to look at the scale of croft misuse and absenteeism and to calculate the number of staff who would be required to tackle such a major issue?

16:00

Keith Aitchison: Nobody has spoken to us about that.

Maureen Macmillan: I am interested in what you said in your submission about losing your current civil servant status when the commission becomes an NDPB. Part of your evidence was a written response from Ross Finnie to a parliamentary question way back in 2000:

“There will be scope for existing staff to opt to keep their current civil service status and to remain in post on a secondment basis.”—[*Official Report, Written Answers*, 6 April 2000; Vol 5, S1W-6040.]

Has that now changed?

Keith Aitchison: Yes, it has. I should point out that the commission is already an NDPB; the legislation will make only minor changes to its status. You will note in annexes 4 and 5 to our submission that other ministers have subsequently said that when the commission becomes subject to the new legislation, the staff will be faced with a choice of taking up commission employment or seeking other work in the civil service.

Maureen Macmillan: Do I understand correctly that there has been no discussion with you about that?

Keith Aitchison: That is correct. I refer you to what the previous panel said and to the point that we made in our evidence that nobody ever asked us what we thought about no longer being civil servants. Not once has anyone said to us, “How do you feel about this? How will it affect you? What sort of assurances do you need?” There have been discussions, but they have all followed the line, “This is going to happen. How do you propose to deal with it?”

Maureen Macmillan: Your understanding now is that the minute the new regulations for the Crofters Commission come into force, you will

have to choose whether you want to remain a civil servant and move immediately to another civil service department or stay with the commission. Has there been any indication that there might be a grace period?

Keith Aitchison: There has to be a grace period, because I do not think that the Executive can legally transfer the posts from the Crown to another body except through legislation. As Mr Ewing pointed out, there is absolutely nothing in the bill about that. The Executive will have to make regulations, but it will not be able to do so under the bill until it comes into force. Therefore, on day 1 of the newly constituted commission, the three of us and our colleagues will all be sitting there as civil servants even though we cannot be civil servants and work for the commission. It is a nonsense.

Maureen Macmillan: So there is a big information gap.

Keith Aitchison: There is a rationality gap. On the one hand, the Executive says, "You cannot be a civil servant and work for the Crofters Commission after the legislation comes into force." On the other hand, it has to accept that on day 1—and perhaps on day 100—we will be civil servants working for the Crofters Commission under the new legislation.

Maureen Macmillan: I will leave it there for other people to follow up.

Fergus Ewing: In the excellent reportage of the matter in today's *The Press and Journal*—an excellent organ of the press to which I gave this story—an Executive spokesman said:

"Ministers are determined to ensure that the valued staff of the Crofters Commission will not be disadvantaged in any way by the reforms."

The question is: what would be the consequences of your losing civil service status? What would it mean in practice to you, your members and the commission staff? What would the impact be and why would you prefer simply to retain your current civil service status?

Archie Macnab: The impact is clear—if we wish to retain our civil service status, there is a lack of alternative jobs in Inverness. A number of the staff are committed to Inverness—they belong to the town, have parents to look after there and that kind of thing. It would be a huge problem. Where would we go, how would we go and what would happen?

Jackie Forsyth (Public and Commercial Services Union): Another concern is that a number of our members have passed civil service promotion boards and are looking to proceed to higher grades. There is very little opportunity to do that within the Crofters Commission because it is a

small body. If we do not have our civil service status, we will not be able to progress in another civil service department.

Keith Aitchison: The commission is a small organisation. As the committee has heard, it has fewer than 50 core staff, so people do not move up the ladder much. Many people have traditionally gone to Edinburgh to serve time and get promotion. Some of them come back, but others do not. Another element is whether the commission will survive for a long period. As the union, we must look into the future and consider whether the commission will survive another five years or survive another review. Ministers might decide that it is time to stop crofting regulation and set crofters free, as some have argued. If we were not in the civil service at that point, we could not get Executive posts.

Alternatively, ministers might decide that it is time for the commission to be based somewhere other than Inverness. Practically, as members may have discovered when SNH staff spoke to the committee, people cannot just up sticks and move house. Family commitments such as children's education or aged parents can impede movement. Being in the civil service affords us protection. We are not subject merely to the management of the commission; we have the protection of the civil service in that we can speak to people who are more senior than the management of the commission if they do something that we find unacceptable. For all those reasons, we are agin the proposals.

Another issue is money. Pay rates in the two smallest Executive NDPBs that we can find—the National Library of Scotland and the Royal Botanic Garden Edinburgh—have suffered since they became NDPBs. They are much larger than the commission, with staff of 120 and 150 respectively. If those staff cannot persuade management to pay wages that are equivalent to those in the civil service, I cannot see how we will be able to do so. Taken together, all those issues make us extremely reluctant to leave the civil service.

Fergus Ewing: I have a copy of a letter that was sent from the Scottish Executive to Joe Kerr, the chair of the north of Scotland branch of the PCS, on 10 November 2005. It explains that the reason for excluding commission staff from civil service status is that

"it is not possible to include a provision such as the one suggested"—

that is, that the commission operates in a way similar to the bodies to which you refer in your submission—

"as it would have the effect of fettering the new Commission in relation to staffing matters."

That appears to be the minister's reason for the change. I do not understand how the change, which would in effect exclude the Crofters Commission from taking on new civil servants and end the free flow of staff between Edinburgh and Inverness, would do anything other than fetter the hands of the commission management. What do you make of the reasoning that you must stop being civil servants because otherwise the new quango's management will be fettered?

Keith Aitchison: The Executive has probably come to that form of words because we have pressed it for arguments as to why we cannot be civil servants. We have been told that there is no legal reason why the staff of an NDPB cannot be civil servants, so there must be another reason. I believe that the proposal is simply the practice of the past, and that the Executive is determined to continue with it because that is what it knows. When we ask why we cannot remain civil servants, we are told that the Executive cannot fetter the board. On the other hand, we are told—the committee heard Mr Rankin say this—that the measure will not be included in the bill, because the situation might not work to the commission staff's advantage. The Executive cannot make that argument and the argument that we should not fetter the board after the bill becomes law—the two arguments do not sit together.

Fergus Ewing: We have heard that Ross Finnie pledged that there would be an opportunity for secondment from the civil service. In other words, he said that an unspecified number of commission staff would be able to remain civil servants. Is any such offer still on the table and, if so, has a clear statement been made about how long the secondment period would be? Would it be for life, for years, for months or do we simply not know?

Keith Aitchison: There is no offer on the table. At most, we are told that if the board were willing to entertain the idea of secondments, ministers would probably agree to it, which puts the matter back into the hands of the board. We must ask ourselves whether the board would wish to have its own staff. With the board taking responsibility, it is highly likely that it will want to push for its own staff.

The Convener: There are no further questions, because you got to the nub of the issue and answered the questions that members asked. Do not feel bad about the fact that I will let you go early, because we have a huge number of questions to ask the minister. Thank you for taking the time to be grilled this afternoon. I will suspend the meeting for a couple of minutes to let panel 3 go and to let the ministerial team in.

16:10

Meeting suspended.

16:12

On resuming—

The Convener: I welcome our final panel. We have in front of us Rhona Brankin MSP, the Deputy Minister for Environment and Rural Development, and Shane Rankin, who is described as the team leader on the Crofting Reform etc Bill—that description is slightly out of date. Ethel Burt is the senior principal legal officer in the Scottish Executive legal and parliamentary team. I hope that I have those titles right—they are the ones that appear in my script. I invite Rhona Brankin to make an opening statement. This is our fifth evidence-taking session, and we have heard a lot of evidence. I am interested to hear what comments she would like to make before we put questions to the team.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I would like to assist the committee by addressing the main issues that have been raised so far around the crofting counties. The evidence that you have received has demonstrated that there are huge expectations that the bill could address many of the challenges that are posed by regulation and that it could galvanise the Crofters Commission. It has also demonstrated that the bill is incredibly technical, to use your words, convener. We have heard some evidence on that today.

Many witnesses and submissions have praised aspects of the bill. Even fierce critics have said that it contains some good provisions. Perhaps understandably at this stage, not many people have suggested amendments. In some cases, when they have done so they have been quickly countered by other witnesses. For example, one witness suggested that we should have a one croft, one crofter system. That suggestion was quickly countered by another witness, who said that it could damage croft businesses.

16:15

Essentially, the bill's most vocal opponents are critical of a proposal that does not exist: there is nothing in the bill that will introduce a free market in crofts. I do not favour and I will not introduce an unfettered market. For that reason, I have had my officials develop the proper-occupier proposal, in response to a proposal that crofters made to me. The proposal, which I will introduce by amendment at stage 2, is radical. It will affect the principles of the bill because, at its heart, it will seek to ensure that crofters, especially absentee owners, cannot opt out of crofting. Although the proposal will add a new form of regulation, it will do so by making the

rights and responsibilities of individual croft owners absolutely clear. I am happy to brief the committee specifically on the proposal if it would be of assistance.

The bill will amend the Land Reform (Scotland) Act 2003 to address the issue of interposed leases in the Western Isles. It is hugely disappointing that some landlords might be attempting to thwart the intentions of land reform. I have already instructed officials to test the validity of interposed leases in the Scottish Land Court, but if the court judges them to be valid the Land Reform (Scotland) Act 2003 will need to be amended. The Crofting Reform etc Bill provides the legislative vehicle to do just that. Without amending the 2003 act, we could not address the issue within a reasonable timescale.

Planning, and in particular the challenge of protecting good croft land from housing development, has been a theme in much of the oral evidence. We have heard more about that today. Of course, housing and other developments are essential in many crofting communities, as populations need to be bolstered and jobs need to be created. However, under planning law, decisions on where development takes place must rest, after appropriate consultation, with elected planning authorities. Protecting croft land to sustain crofting communities is also important. That is why the bill will create mechanisms to ensure that crofters' views are communicated through the local panels that are to be set up. In addition, as we heard, the commission will be given a broad development role. Planning is hugely important.

The committee has heard many exchanges on whether the commission's board should be elected. As an independent tribunal, the commission exists not only to serve existing crofters but to balance the rights and interests of crofters with those of crofting communities, landlords and anyone who might wish to become a crofter. The difficulty with the proposal for an elected board concerns how we decide who should elect the board members and how we ensure that the board remains independent. However, I recognise the strength of concern and feeling about the need to ensure that the board represents crofters and their communities. It strikes me that an element of representation could be provided for in the local panels under the bill's provisions as they stand. I am happy to keep discussing that issue.

The register of crofts would be absolutely central to making any election possible. Sir Crispin Agnew explained some of the reasons for the limitations of the current register. The bill sets out a series of measures, including suggestions that were made by Sir Crispin, to improve the register's accuracy

and completeness and to make it map based. As the committee heard, the commission is already working to map croft land digitally.

There has been much discussion about what the Crofters Commission should do, what it can do and what it may not have done with its existing powers. As Sir Crispin Agnew explained, the commission is sometimes blamed for decisions that are made elsewhere. Essentially, the commission must regulate effectively and ministers must ensure that that happens. As far as I am concerned, the bill is an essential platform for that.

The bill will make crofting more resilient and stronger. It is a fundamentally important piece of legislation. It will tackle the cynical abuses of crofting legislation and the neglect and abuse of croft land. It will prevent asset stripping by absentees and by owners of individual crofts. At the same time, it will protect and reinforce the rights of genuine crofters. It will provide the commission with a set of tools to sustain and support crofting and crofting communities and it will ensure tough and rigorous regulation. We should have high expectations of the bill. I have high expectations of the Crofters Commission in its new role. Let us recognise that change is as much a feature of modern crofting as it is of every other aspect of life. The bill will equip crofters and the commission to respond positively to change. I am happy to respond to members' questions.

The Convener: As you would expect, there is a queue. I shall allocate the first three questions on the basis that three colleagues have said that for parliamentary reasons they have to leave early. If the three of you could be decent to each other and not take too long, we should get you all in before you have to leave.

Mr Ruskell: Minister, you talked about landowners trying to thwart the aims of the Land Reform (Scotland) Act 2003 and about cynical abuses. One of the bill's aims is to close some loopholes in the 2003 act. I have a question regarding a particular loophole. At the moment, there are situations in which landowners offer potential landowners options to acquire land in order to thwart communities' right to register land under the 2003 act. I am sure that you are aware of that loophole being used in Crieff and in other places. Is that a loophole with regard to the absolute right to buy within crofting communities, in the same way as landowners use interposed leases to thwart crofting communities' ability to buy land? Could the issuing by a landowner of an option to acquire land provide a loophole that needs to be closed by the bill?

Rhona Brankin: I do not want to give you a definitive response on the position in Crieff at this stage. What we have done in the bill is to respond

to the issue in the Western Isles, where a landowner has put in place interposed leases specifically to prevent the crofting community from benefiting from a wind energy project. The Executive considers that that is wrong. Indeed, Professor Paisley has given his view that those interposed leases are void and should have required Crofters Commission permission. However, we needed to take that issue to the Scottish Land Court, which is what we have done. Also, we are ensuring through the bill that, where the Land Reform (Scotland) Act 2003 will be amended by the bill, crofters benefit.

I would be interested in corresponding with the committee about whether there are other, similar situations under the 2003 act, although not necessarily for this bill. A review of the 2003 act will take place in the autumn. Several issues are coming up about how it is working in practice. I am anxious to ensure that it is working as intended. I am sure that a range of issues will come up. The one that you raise could be one of them. I will not give you a definitive answer now about whether it would be appropriate or possible to do anything in this bill, but if you want to correspond with me I am happy to do so.

Mr Ruskell: It would be useful to get some clarity about whether the situation could also apply to crofting communities under part 3 of the bill. If we pass the legislation, more loopholes could be found later, so we need to close them all right now.

My second question is about planning. You mentioned in your opening statement the need for appropriate consultation. What are your views about the Crofters Commission having statutory consultee status in the planning system? How can we ensure that the situation in Taynuilt does not happen again and that the commission ensures that we have a joined-up system with local planning authorities?

Rhona Brankin: Key to the planning system working in the interests of crofting communities is the early engagement of those communities in the planning process. We do not want unpleasant surprises. The bill, which provides for local organisation and for local plans to be developed in different areas of the crofting counties, should ensure that issues to do with affordable housing, for example, are discussed as part of local plans. Such issues should be discussed with the Crofters Commission, which should work jointly with local crofting communities. That already happens to a certain extent. In Knock and Swordale, for example, the Crofters Commission has done good work with the local crofting communities.

Early engagement is essential. It probably has to be formalised. I have had discussions with Malcolm Chisholm, the minister with responsibility

for planning, and I know that members have also been thinking about whether there could be measures on early engagement in the Planning etc (Scotland) Bill. The advice that I have received is that we would not have to use primary legislation to make the Crofters Commission a statutory consultee in the planning process; it could be done through secondary legislation. Since my meeting with Malcolm Chisholm, I have been following that up. Where good practice exists it works well, but it should exist everywhere. We probably do require the Crofters Commission to be a statutory consultee in the planning process, and I shall push for that to happen.

The Convener: That point has come through loud and clear in all our evidence, so it is useful to get that confirmation.

Mr Morrison: When we heard evidence from the second panel, which included Shane Rankin, David Green and Drew Ratter, we were told in response to a question from Richard Lochhead that the bill was required because we needed primary legislation to create new crofts. Is that one of the things that is driving the Executive?

Rhona Brankin: Absolutely. As far as I am concerned, one of the most important things about the legislation is the ability to create new crofts. More than 900 people are currently on the Crofters Commission's waiting lists for crofts. We need to ensure that people in communities, especially young people with energy and drive who want to croft, are able to croft. We need to do a range of things and, as far as I am concerned, the creation of crofts could be hugely powerful.

The committee has heard evidence from Shetland Islands Council, which proposes to create more than 100 new crofts, and from some of the communities that have bought out estates and are keen to create new crofts. That could be a hugely powerful dynamic. If we compare crofting in the crofting communities with what happened in Aberdeenshire, we can see that crofting has the capacity to sustain population in remote, rural and island communities. If people want to croft but do not have the opportunity to do that, we should be creating new crofts, and I know that a lot of landowners and public bodies are keen to do it.

Mr Morrison: I cannot reconcile the idea that we need the bill to create new crofts with the fact that new crofts were created in Balmacara about a year ago. What status do the people who live on those crofts have? Are they crofters or are they pretender crofters?

Rhona Brankin: There is a key difference. The crofts in Balmacara were created by subdividing existing croft land. The key thing about the bill is that we need primary legislation to bring land that is not currently designated as croft land within the regulatory framework of the Crofters Commission.

The potentially exciting aspect of that is that when new crofts are created, the person who takes on the croft will be able to give up the right to buy and their successors will also renounce the right to buy. The approach will create opportunities and persuade landowners who were reluctant to become involved in crofting to consider becoming involved. Given the number of people who want to croft, we need to create opportunities in crofting communities.

16:30

Mr Morrison: In your opening remarks, you blithely dismissed vocal—and not so vocal—opponents of the bill and suggested that they do not quite understand what you, Ross Finnie and Shane Rankin want to do to crofting and crofting communities. First, why has the Scottish Executive so manifestly failed to sell every aspect of the bill to crofting practitioners and commentators? I am not talking about the good bits of the bill; good products can be sold easily in any market. Secondly—I am not being personal in asking this, Shane—is the Executive satisfied that the role that Mr Rankin has played complies fully with the Nolan recommendations?

Rhona Brankin: It was absolutely not my intention to suggest even for a minute that the people who have concerns about the bill do not understand it. I took on the job of Deputy Minister for Environment and Rural Development last summer, when work was at a fairly advanced stage. I quickly became aware that there are real concerns about the bill, which has been a long time coming and builds on the results of the first consultation on the matter, which took place in 2002. Because I was aware of concerns, I went to talk to crofting communities. I went to Shetland, the Western Isles, Assynt, Tìre and Inverness and I brought together a group of people to tell me what they thought should be changed—

Mr Morrison: Despite all that—

The Convener: Let the minister finish. You asked her a couple of big questions.

Rhona Brankin: I was aware of concerns and brought together people such as crofters and experts in crofting law, who told me what needed to be done.

The committee has received mixed evidence on the bill. Some people think that we do not need the bill, or that if the Crofters Commission acted more toughly we would not need it. Other people very much welcome aspects of the bill. It is not right to characterise the evidence as suggesting that everyone thinks that the bill is not needed. There are mixed views, but many aspects of the bill have been much welcomed.

I do not think that Shane Rankin has a conflict of interest. He is ultimately accountable to Scottish ministers as chief executive of the commission. The bill is about the commission's future. In effect, the commission is currently a creature of SEERAD, but the bill will set it up as a modern NDPB. We are putting the commission at arm's length. We do not know who the new commission's chief executive will be. Ministers will make the appointment in the first instance, but thereafter it will be for the board of the commission to make such decisions. Of course, the Parliament and not Shane Rankin is responsible for the passage of the bill. Whether Shane Rankin will be chief executive in the future is a matter for him, but if he is, he will not take decisions by himself, because decisions will be taken by the board.

The Convener: We move on to Richard Lochhead—he is the last of the departees.

Richard Lochhead: Many of the crofters to whom we have spoken have said that, had the Government articulated its vision for the role of crofting in the 21st century, they would perhaps have better understood the objectives that the bill is trying to achieve. How do you encapsulate your vision of the role of crofting in the 21st century?

Rhona Brankin: I have said why I think that crofting is valuable and has played a hugely important role in sustaining populations in rural and island communities. I believe passionately that that is the case. The strength of crofting has maintained those populations.

Crofting is something whose time has come, given the changes that are happening in rural development. For example, the way in which crofters croft their land is often environmentally friendly and crofting is well placed to provide fresh, locally produced food for schools. Crofting is a form of tenure that has stood the test of time and which can be strengthened in the 21st century, and the Crofters Commission has a huge part to play in ensuring that there are opportunities in the future.

The creation of new crofts will be hugely powerful. My vision for crofting is of strong, sustainable crofting communities in which young people have an opportunity to take part in crofting. The Crofters Commission will have a strong regulatory role, but it will also work with the crofting communities to ensure that their views are heard.

Richard Lochhead: In much of the evidence that we have heard—as the previous questioner said, and as your answers about the evidence that you have heard from round the country reflected—a lot of concern has been expressed about the bill. Am I right in thinking, having listened to your opening remarks, that the only significant

amendment that you plan to lodge at stage 2 will introduce the concept of the proper occupier, which the committee has discussed? Given all the concerns that have been expressed, is that the only amendment that you intend to lodge at stage 2?

Rhona Brankin: At the moment, that is the only amendment that we will lodge, although there is more time. The issue of planning has come up time and again, especially following what happened in Taynuilt. However, it does not require anything in the bill to do something about planning; it requires secondary legislation under the Planning etc (Scotland) Bill. The proper-occupier proposal is central to some of the major concerns that have been expressed about the potential for an unfettered market. It is only one amendment, but it is a hugely important one.

People's concern that the Crofters Commission has not used its existing powers to tackle absenteeism has come through loud and clear. The bill confers a clear duty on the Crofters Commission both to act on the direction of ministers and to ensure the sustainability of crofting communities. More amendments may arise out of further discussions, but that is the stage that we are at just now. Not every concern requires an amendment to the bill, and the concept of the proper occupier is potentially a very powerful tool.

Richard Lochhead: My final question relates to some of the pressures that have led to the debates that are taking place around crofting just now. Many of the pressures that are impacting on crofting and which have led to many of the controversies are external—they do not arise from crofting itself. The debates have centred on the potential for people who are not interested in working the land to be able to snap up crofts and on the temptation for crofters to decroft in order to sell their land and home for a lot of cash to people who want to move into the area.

Those issues are linked to the crisis in affordable housing in Scotland, particularly in our remote and rural areas. Do you accept that there is a big crisis in affordable housing and that it is having a detrimental impact on our crofting communities?

Rhona Brankin: I accept that there are some serious issues around affordable housing, not only in the Highlands and Islands but in many parts of rural Scotland. I am deeply conscious that there are major problems in some of the crofting communities. On Skye, for example, the economy is successful and many people are moving on to the island as a result. I am very conscious that some crofts on Skye are changing hands for large amounts of money and that that makes it very difficult for young people to get a start in crofting.

That is why the Executive is taking a range of measures to address the impact of the market. First, we are creating new crofts. Secondly, and importantly, at stage 2 we will lodge the proper-occupier amendment, the intention of which is to dampen down what is happening in the market. If we have a tough regulatory framework that covers owner-occupiers, it will not be possible for a croft to be sold to someone who will not live on it and work it. We will introduce a tough new regulatory framework to govern owner-occupiers.

Of course, if we are to ensure that crofting communities can have their say, we will need to do something about the planning system. For example, crofting communities should be able to work closely with the Crofters Commission and the local authorities to develop the potential for affordable housing. I know that the Forestry Commission Scotland is keen to work with crofting communities in that way and that Communities Scotland is already involved in such engagement.

The bill includes a duty on the Crofters Commission to work with other agencies. As far as I am concerned, one of the key tasks that the new Crofters Commission will have to undertake is to look at how affordable housing links into the existing regulatory framework.

Richard Lochhead: Briefly and finally—

The Convener: You will have to be really brief, Richard.

Richard Lochhead: I am confused about the Executive's vision for crofting. You seem to suggest that, in allowing new crofts to be created, the Executive is helping to address the crisis in affordable housing and not that it is doing so to promote the future of crofting. Surely the Executive will be able to address some of the pressures that face crofting if it addresses the affordable housing crisis that exists in many of our rural communities. Although there is land as far as the eye can see in those communities, we are not freeing it up for housebuilding. The land reform legislation was not radical enough; we need other measures to do that. What is the Executive's vision for crofting: is it about affordable housing or is it about crofting?

Rhona Brankin: It is about both; the two are inextricably linked.

The Convener: Thank you for that to-the-point answer, minister.

Mr Brocklebank: I was interested to hear what the deputy minister said in her opening remarks about the bill doing nothing to open up a free market in crofts. She also wrote a letter in those terms to the *West Highland Free Press*. However, at the same time that the deputy minister was writing that letter, the Minister for Environment and

Rural Development was giving a radio interview to BBC Scotland, in which he said:

"We cannot prevent a crofter from cashing in on his major asset."

I hope that I have quoted him correctly.

The minister appears to believe that there is, de facto, a free market in crofts. Is it not therefore understandable that a lot of people out there have also taken that from the bill? People think that although the bill did not create the market, it will do nothing to dampen down the market that you have described.

Rhona Brankin: I hope that the comment, which I suspect was taken out of context, did not create that impression. I can only repeat that there is nothing in the bill that will introduce a free market in crofts. On the contrary, I am trying to ensure that the Crofters Commission can take tough action to ensure that the worst excesses of the market can be dampened down. In that regard, in response to pressure from crofters, I have introduced an amendment in relation to the proper occupier.

16:45

Mr Brocklebank: Earlier this afternoon, I put it to Shane Rankin that it is extremely difficult to see how the free market can be dampened down in that way when, previously, a free market was allowed to work within a regulated system. There is a regulated system at the point of purchase, but there is a free market at the back end. At any rate, that seems to have been the effect. Is not that the basic conundrum that lies at the heart of the bill?

Rhona Brankin: There are issues to do with the extent to which the Crofters Commission has acted in the past in terms of the regulatory framework. However, few of the responses to the consultation on the bill have said that an end should be put to the market. We need to be able to ensure that the Crofters Commission acts to ensure that the market is regulated appropriately so that it does not act against the interests of the crofting communities. That has happened in some cases, as you have heard in your evidence-taking sessions.

I want to ensure that owner-occupiers who seek to evade regulation by decrofting and, in some situations, breaking up their croft and selling small bits are unable to do that. The Crofters Commission is central to that. Owner-occupiers should be treated in the same way as tenants are. They must be brought into the regulatory framework. The gentleman from the Royal Institution of Chartered Surveyors who gave evidence to the committee was clear that the proper-occupier provision would serve to dampen down the market because of the burden that it

would place on someone who was buying a croft. That would dampen down the price at which crofters were able to sell their crofts.

Mr Brocklebank: How would anything in the bill prevent what happened in the celebrated Taynuilt case from happening again?

Rhona Brankin: The owner in the Taynuilt case was, in effect, an absentee owner. Under the proper-occupier provision, he would have been required to live and work on his croft.

Mr Brocklebank: You have said that the Crofters Commission should have made more use of its regulatory powers. In that case, the Crofters Commission did not object to that plan going through. We learned that in evidence last week. It was aware that the land was crofting land, but it made no objection.

Rhona Brankin: The Crofters Commission certainly did not take appropriate action against that absentee owner. The proper-occupier provision would ensure that action was taken against an absentee owner. That is central.

The Crofters Commission was in a difficult position because that crofter had got planning permission. That brings us into a difficult area, because the planning legislation states that elected planning authorities should have the final say. Although the Crofters Commission might have wanted to do something, it was not able to. Previous decisions in the Scottish Land Court backed up that view.

We need to tackle planning and the issue of the proper occupier. If those issues had been tackled, the Taynuilt case would not have happened.

Mr Brocklebank: The Crofters Commission was given the opportunity to object at the planning stage, but our understanding, based on what the planning officials told us last week, was that it chose not to do so. Shane Rankin might want to comment, because we went into that matter last week.

Shane Rankin: The decision on the Taynuilt case is interesting, because it rested on whether there was a crofting community in Taynuilt. If there is no crofting community, there is no scope for the commission to prevent or obstruct the decrofting of the land. In that sense, an individual crofter is entitled to seek a decrofting. The decision on the Taynuilt application was that there was no crofting community there. The decision was therefore consistent with the earlier advice to the planning authority that it was reasonable to take the croft land in question out of crofting tenure and identify it for development.

That is the case in many places. As Richard Durham pointed out, the commission is consulted informally on local plans. We must try to help

crofting communities to articulate which bits of croft land they want to retain and which bits they are prepared to release for development. That is why there was consistency in our approach in Taynuilt.

Mr Brocklebank: But forgive me, the crofters were aware that the land was crofting land. They pointed that out to you and asked whether you wished to object to the planned development.

Shane Rankin: Yes, we commented on that. My reading of the evidence that you received last week is that the Crofters Commission said that it was reasonable to identify the land in Taynuilt for development.

The Convener: I am reading the relevant part of the *Official Report* of last week's meeting, in which it was said that the Crofters Commission had

"reservations about this area of land being granted planning permission".—[*Official Report, Environment and Rural Development Committee*, 8 May 2006; c 3217.]

However, the commission agreed to the area being released for housing in the planning process. We do not want to get stuck on one planning application, but the Taynuilt application seems to exemplify for most of us the problem of neither the demand for local housing nor the demand for crofting land being satisfied.

Many of us view the Taynuilt case as symbolic, in a sense, of what is not right with the current system. We must weigh up what the bill's provisions could do to rectify that situation for the future against the ministerial view, which is slightly different. We could consider the Taynuilt situation for hours, but we all have the relevant paperwork and can reflect on it.

Next on my list is Maureen Macmillan.

Maureen Macmillan: The minister said that 900 people were on the waiting list for a croft and that there were plans to create 100 crofts in Shetland. What sort of total numbers are you considering and have you earmarked other places for the creation of new crofts?

Rhona Brankin: We have not earmarked such places, but I am keen for the Crofters Commission to speak as early as possible to communities that are interested in the creation of new crofts. The Forestry Commission Scotland is interested in working with communities in that regard and the Loch Lomond and the Trossachs national park is also interested in the possibility of creating new crofts. Public bodies such as housing associations are also interested in the issue. I want to ensure that information about the bill and the opportunities that it will create gets out there to communities and that the Crofters Commission takes an active role in working with communities to create new crofts.

Maureen Macmillan: I am concerned that there should be a match between areas in which there is a demand for new crofts and the creation of a new supply of crofts. When we were in Argyll, we were told that there was huge demand from young people for crofts. One would hope that new crofts would be created in Argyll, apart from what is happening in Gigha. Has any work been done on considering where the demand is and looking for potential areas for new crofts that would match that demand? People in Lochaber who want a croft do not necessarily want to go to Shetland—or vice versa.

Rhona Brankin: Absolutely. I take that point. It indicates a key task that we must undertake. We know the areas in the crofting counties in which there is huge pressure for crofts. It is a task for the Crofters Commission—and, indeed, for the directions that ministers give it—to ensure that steps are taken to create new crofts in areas where there is high demand.

Maureen Macmillan: When I made that remark, I got a big wink from somebody in the audience who is from Shetland, so I apologise.

Rhona Brankin: People in Shetland are very open to new people coming to the area.

Maureen Macmillan: Indeed—that is why I quickly said "and vice versa".

The legislation will mean that potential crofters will give up the right to buy, but what will happen when a crofting community is created? Will the crofting community right to buy—under the Land Reform (Scotland) Act 2003—have to be given up as well?

Rhona Brankin: An individual crofter will give up the right to buy when a new croft is being made. The communities that have acquired land under the crofting community right to buy are obviously concerned. They are keen on the provision to create new crofts, but of course they would be concerned if individuals were able to buy from them.

Maureen Macmillan: But what would happen if an estate gave up several thousand acres for crofting and 20, 30 or 40 crofts were created on it, then the crofters decided that they wanted to exercise the crofting community right to buy?

The Convener: That point has come up before.

Maureen Macmillan: Yes. Could they do that? Do you perhaps want to think about that?

The Convener: It is really a point of clarification. The matter came up at a couple of our meetings when we were debating the right to buy more generally. What will happen in areas where the land has been bought out?

Rhona Brankin: I am sorry; I missed that.

The Convener: The matter came up at a couple of our evidence sessions. If you cannot give us clarification today and you want to think about it, that is fine, but it is definitely an issue.

Rhona Brankin: I am sorry; I misunderstood the point that was being made. Ministers would make the decision on the basis of what was in the interests of the community. Shane Rankin might want to add something.

Shane Rankin: It occurs to me that the issue would nearly always arise when a community landowner or public sector landowner set out to create new crofts, so it could be the Galson estate on Lewis, the Stornoway Trust or the Forestry Commission. Invariably, community landlords will have been through the community buy-out process already and it will have been endorsed and approved by ministers. Ministers are not likely to endorse and approve a new, second-tier crofting community coming back for another go at buying out the same community that has already been approved.

Maureen Macmillan: No, I was thinking of a situation in which a private landowner decided that he or she would allow new crofts to be created.

Shane Rankin: I do not think that there is a huge expectation that private landlords will rush forward, but community landlords are interested in the issue.

Maureen Macmillan: Yes, but that would be a totally different situation. Thank you.

The Convener: All colleagues who have not yet asked the minister questions have indicated that they want to come in. I see no reason why they cannot all do so as long as nobody takes too long. We will have questions from Nora Radcliffe, followed by Rob Gibson, and we will then move on to colleagues who are not members of the committee.

Nora Radcliffe: Minister, will you expand on the creation of new crofts? Much of the discussion seems to assume that new crofts will be created in the crofting counties on the west coast, but there is an expectation that new crofts might also be created outwith those areas. Will you say a little more about what thought you have given to areas such as Aberdeenshire and the Borders? Those areas are well outside the existing crofting counties but there is an interest in crofting tenure there. Has any thought been given to how that would be dealt with?

Rhona Brankin: Ministers were responding to the expressed interest of small landholders in Arran, from whom I think the committee heard evidence. There was a strong view that they were missed out when the crofting counties were set up and the boundaries were drawn so, in response to

their request, we considered the possibility of extending the area that crofting covers. We decided that the best way to do that was to introduce a general facility to create new crofts outwith the crofting counties. There has not been a huge demand for that, although I understand that the committee heard such a demand from crofters from Speyside. Other communities might come forward, but we were responding specifically to the demand from small landholders in Arran.

The primary intention is not to extend crofting, but the bill would allow that to happen at a later stage if there was a strong demand for it and people agreed that that was the right way forward.

17:00

Nora Radcliffe: There have been expressions of interest in my area. The provision was written into the bill with one particular instance in mind but, now that the door has been opened, a lot of thought will have to be given to where else the provision might take us.

What is the timeframe for the Scottish Land Court test case on interposed leases? Will it be completed in time for the outcome to be incorporated into the work that is being done around the bill? Given that the granting of some interposed leases is beneficial, might the test case cause some collateral damage?

Rhona Brankin: The reason why I have issued instructions that we should hear from the Scottish Land Court as soon as possible is that I am conscious of the fact that the crofters in Pairc have major concerns about what is happening there. I do not know whether we have up-to-date information on progress.

Shane Rankin: The case has been referred to counsel to take to the court. Members have heard from solicitors and various others that it will take a number of months to progress the case through the court. That is why the provisions in the bill are written as they are. If we could predict how the court would call the case, we might not have to legislate at all. We are pursuing a belt-and-braces approach.

Rhona Brankin: On Nora Radcliffe's question about other leases, it will be up to ministers to judge which lease buy-outs should be approved. They will consider what is appropriate in the context of ensuring sustainable crofting communities.

Nora Radcliffe: Fine.

My final question is about mapping, which has come up over and over again. How important is mapping? Is it important enough for the Executive to give it financial backing? Should it be left to crofters to do, with or without assistance? A way

round the problem might be to invite individuals to resubmit to the Crofters Commission the data that they submitted to IACS.

Rhona Brankin: It is fundamental that we get the mapping done, so that we have an up-to-date register of crofts. Witness after witness has said that and I am absolutely persuaded by it. When the Crofters Commission becomes an NDPB it will get a budget and make decisions about how it uses it, although directions will come from ministers. If it is to regulate the system effectively and not spend a huge amount of time in difficult, bureaucratic and time-consuming processes, it must have that information. That will be a hugely important aspect of the Crofters Commission's role.

I have heard what people have said about why the IACS data cannot be used. My understanding is that it is bound up with data protection issues, but I am happy to explore the matter. We must ensure that the Crofters Commission has access to as much high-quality data as possible.

The Convener: Does Rob Gibson want to follow up on the same topic?

Rob Gibson: Yes. The creation of new crofts and the extension of the crofting system, perhaps to other parts of Scotland, will put quite a lot of strain on resources. The financial memorandum does not spell out what will be required to deal with neglected and misused crofts, absenteeism and the implementation of the proper-occupier proposals. Does not all that, as one crofter said to me, smack of there being a paralysing incapacity to enforce change?

Rhona Brankin: Absolutely not. A fundamental motivation for the bill is to implement change. At this stage the strong demand for new crofts has come from Arran. We cannot crystal-ball gaze in the financial memorandum.

One of the key aims of the bill is to reduce unnecessary bureaucracy. I want the Crofters Commission to take action that makes a difference in crofting communities and to take tough action on absenteeism, dereliction and owner-occupiers. Something is wrong if the Crofters Commission is taking up to six months to sort out fairly straightforward assignments. We must ensure that it is set up and funded appropriately, and does what it was set up to do.

Rob Gibson: Like the curate's egg, the bill has good bits, but for people to accept that it is worth supporting in its totality, there must be a provision that restores to crofters the confidence that the commission is on their side. I heard your comments about the commission perhaps having input to local plans, but you oppose an elected board because you say that it would have difficulty in being independent. Why do you think that a

quango that is created to fulfil the role will be more independent and is more likely to gain the confidence of crofters than an independently elected body?

Rhona Brankin: The process has been going on for a number of years. The suggestion that the Crofters Commission should become a modern NDPB came through clearly in the initial consultation a number of years ago, and the proposals in the bill follow on from that. Some of the complaints that have been made and concerns that have been expressed about the Crofters Commission are that it has not been ambitious enough, has failed to take action and, in some cases, has not been innovative enough. Setting up the Crofters Commission as an NDPB will give it a range of tools. NDPB status will let it make decisions about the deployment of its budget, about how grants are targeted and about the possibility of creating different grants and tailoring grant schemes to particular parts of the crofting counties.

It is important that the Crofters Commission is set up as an arm's-length body with that independence, but with a clear remit to support and extend crofting, to ensure that crofting can continue to do what it should be doing in the crofting communities and to expand and strengthen crofting.

Rob Gibson: I understand your aspirations, which I think many people share. However, will the register of crofts be any more accurate than the electoral roll? Have we reached the stage of needing to do something fundamental about how the Crofters Commission is set up, if people are to believe that the commission will do what they want it to do?

Rhona Brankin: The bill places a clear duty on the commission to act in a way that is set out by ministers. An NDPB is responsible not just to ministers but to the Parliament and I will ensure that the commission receives clear directions from ministers about what we expect from it and the action that we want it to take. I want the commission to work with communities to develop the local vision for crofting. I have a vision for crofting communities and, potentially, for other communities throughout Scotland, but the Crofters Commission must have a plan that sets out clearly what it will do and targets to achieve those aims, so that we will all be able to monitor the organisation's effectiveness. That is fundamental.

The Convener: We have a little time and I am keen to allow the three members who are not members of the committee to ask questions. Fergus Ewing put questions to the previous witnesses.

Fergus Ewing: My question is about the plight of existing staff at the commission. Ross Finnie pledged:

"There will be scope for existing staff to opt to keep their current civil service status and to remain in post on a secondment basis."—[*Official Report, Written Answers*, 6 April 2000; Vol 5, S1W-6040.]

Why has the right to choose to remain a civil servant been dropped?

Rhona Brankin: Existing commission staff will be offered posts in the new organisation on terms and conditions that will be at least as good as the terms and conditions that they currently enjoy. Staff who do not want to accept an appointment with the new body will remain as Scottish Executive employees and the Executive will endeavour to find posts for them elsewhere in the Executive or in other civil service departments. Ministers have made a commitment that it will be open to the new commission to make arrangements for staff to remain in post on secondment terms if they have concerns about civil service status.

Fergus Ewing: I listened carefully to your answer and I am aware that it reflects the current position. However, that is not the position that Ross Finnie set out in his answer to the Parliament, when he said that staff would have the right to choose to keep their civil service status. That pledge has been broken.

What will that mean in practice? Keith Aitchison and his colleagues told the committee that there might be fewer promotion prospects for staff, who face the loss of security of employment in the civil service, the loss of opportunities to transfer to other parts of the civil service, potential loss if the commission is relocated and—as is described in paragraph 15 of the submission from the PCS—lower wages. An Executive spokesman was quoted yesterday as saying:

"Ministers are determined to ensure that the valued staff of the Crofters Commission will not be disadvantaged in any way".

Are not lower wages a bit of a disadvantage?

Rhona Brankin: Those people have experience and skills that we need, so it is highly unlikely that the commission will not want them. As I said, existing commission staff will be offered posts in the new organisation on terms and conditions that will be at least as good as those that they currently enjoy. We took advice from the Scottish Executive's public bodies and relocation division and nothing has changed on the matter in recent years.

17:15

Fergus Ewing: I put it to you that the fact that there has been no consultation since 2002 betrays an indifference and even an hostility towards the staff, which is unfortunate. Is that not reminiscent of the attitude that General Wolfe displayed to the Fraser Highland infantry at Quebec during the seven years' war when he said:

"No great mischief if they fall"?

Rhona Brankin: You would not expect me to agree with that, Fergus. I am conscious that the staff of the Crofters Commission are highly skilled and experienced and I hope that many of them will continue to work with the commission. It is hugely important that their experience and skills are not lost. I have been the Deputy Minister for Environment and Rural Development only since the summer and I am not in a position to comment on what went before.

Fergus Ewing: I am pleased to hear that reassurance, which I take from you at face value.

Finally, would you be prepared to meet the local representatives of the PCS to discuss the matter further?

Rhona Brankin: I am always happy to meet people.

The Convener: Thank you for that. We have quite a lot of evidence on the matter, so members can reflect on it.

Does John Farquhar Munro have a question?

John Farquhar Munro: Yes. The minister suggested that the Crofters Commission should take a more active role in the control of crofting regulations. However, the evidence that we heard today implies that the commission does not implement the existing regulations in an appropriate manner. That is perhaps why we are in the situation that we are in at present.

Under any new legislation, why should not the Crofters Commission be the body that vets the applicant for a tenancy and determines whether the applicant is appropriate? If the commission approves the tenancy, it is for a short period—an apprenticeship or a probationary period of perhaps five years. During that time the commission monitors what happens to the tenancy and, if the croft is not managed appropriately, it should have the authority and responsibility to terminate the tenancy. I see no reason why that cannot happen, even under the current legislation.

Rhona Brankin: I am sorry, John, will you clarify that? Under the existing powers of the Crofters Commission—

John Farquhar Munro: Earlier, you said that the Crofters Commission should take a more

active role and a more incisive interest in what happens to crofting tenancies to try to combat the open market. I am suggesting that the bill should give the Crofters Commission a remit to monitor and vet new applicants. The commission would have to be satisfied that applicants were appropriate for the tenancy and it would monitor the tenancy for five years so that it was quite satisfied that the tenancy was being operated and managed appropriately and that the tenant was appropriate. Why is that not happening? Why is the commission not prepared to do that?

Rhona Brankin: I think that, at the moment, two thirds of assignments are family assignments that do not require the commission's approval. However, the commission has to approve non-family assignments. You talked about putting in place a system that gives people a probationary period. That was considered, but I am not convinced that there was a huge amount of support for the idea.

Shane Rankin: The issue has emerged since the consultation rather than through it. I cannot remember exactly what was said about it, but one of the dilemmas is that the initial probationary period could discourage investment. Why would someone invest money in a croft if they might lose it in five years' time, perhaps through no fault of their own? The proposal would create a different type or quality of crofter.

Rhona Brankin: If that is something for which there is clear support and if John Farquhar Munro thinks that it would be in the interests of the crofting community, I am open to suggestions and I am sure that amendments would be made to the provisions. The concept of a proper occupier is intended to ensure that there is a new, tight regulatory framework for owner-occupiers, but my mind is not closed to suggestions such as the one that John Farquhar Munro makes and I would be prepared to consider them.

John Farquhar Munro: Thank you.

The Convener: That is helpful. The clerks are reminding me that that was one of the very first questions raised in our first evidence session, when Elaine Smith talked about the process of assignment and whether it would be appropriate for people who request the ability to croft to be asked to submit plans indicating that they have a good idea of the commitment that they are taking on. Perhaps we should leave it there for today, minister, because the issue has been raised in evidence and you have given a commitment to consider it. It is certainly a matter that has been aired in the committee before.

Last but not least, Eleanor Scott has a question.

Eleanor Scott: I have one question and it is quite general, because members have covered

most of the points that I wanted to cover. In a sense, the previous question was a case in point, because it was about the timescale. We have heard that the bill is the culmination of a process that started in 1999 or in 2002—both dates have been mentioned—and has been continuing for several years, but we are already aware of a substantial Executive amendment, on the concept of a proper occupier, that has been introduced since the draft bill was published. There is still a sense that, even after all these years, we are knitting it as we go along. Minister, are you confident that, once the bill has gone through the parliamentary process, we can get it right?

Rhona Brankin: I have been in this job only since the summertime, and I have genuinely tried to take time to listen to crofters and to people who are experts in the crofting system. I am advised that the suggestion about the proper occupier could be a radical amendment that could work in practice. I am conscious that there has been a lot of discussion, going back over many years, and I think that we now have a bill that has a lot of potentially exciting parts to it. I see an exciting future for crofting.

The bill does not have to be the last word on the subject, because one of the beauties of the Scottish Parliament is that we can monitor what is going on with legislation and, if need be, amend it. We were lucky if there were two Scottish bills a year at Westminster, but we have been able to pass around 12 pieces of legislation each year in the Scottish Parliament. I want us all to be able to play our role in ensuring that, once the bill is in force, it does what it says on the box and creates strong, vibrant, sustainable crofting communities that are fit for the 21st century, building on their strengths but giving them the flexibility to take advantage of opportunities that are presented, for example wind energy. The bill will allow us to support crofting communities into the future, and I am sure that members of the committee will take a keen interest in that, as will other members who are active in the crofting counties, such as Alasdair Morrison, Maureen Macmillan, John Farquhar Munro, Fergus Ewing and the many others who have a huge interest in making the bill work. I am determined to make the bill work and to strengthen and expand crofting.

The Convener: You did invite that kind of answer, Eleanor.

Eleanor Scott: I did.

The Convener: I have one question, for which I apologise in advance, because it is pretty technical. We heard in earlier evidence that the general right of appeal to the Scottish Land Court could result in some cases that have already been heard by the Crofters Commission being heard again. Why has the Executive not taken the

chance to change that to restrict the Scottish Land Court to dealing with points of law, given that it would in a sense be repeating the commission's previous consideration?

Shane Rankin: In recent months, the court has also asked whether it should be considering issues of law or issues of fact. Something might have to be floated to address that at a later stage.

The Convener: In the bill or in statutory instruments thereafter?

Shane Rankin: At stage 2 of the bill.

The Convener: My other question is even more technical. It has been suggested that the court should follow the same appeals procedure and have the same powers to make remedies as it does under the Agricultural Holdings (Scotland) Act 2003, for example by awarding damages or making specific orders. Why has that not been picked up? Are you thinking of lodging amendments at stage 2 to address that?

Shane Rankin: I am sorry, but I was not aware that that issue had been raised.

Rhona Brankin: I cannot respond to that, because I am not certain about it, but I am more than happy to take the questions away and to provide a detailed response. I do not want to give you an answer off the top of my head. I will get you the information.

The Convener: I apologise for the last couple of questions, but they related to the final outstanding issues on our list and it is important for us to know what the process will be. We have had much discussion of technical matters as well as of the high-level visionary issues.

I am grateful to the witnesses who have given evidence today. I congratulate the members of the public who have had the stamina to stay with us all afternoon to follow the debate. There has been huge interest in the bill and we were keen to go to the crofting counties and to hear directly about a range of experiences; we wanted to test what people had said in writing by having them appear before us. The process has been immensely rewarding and I hope that people feel that it has been productive. It has certainly kept us on our toes.

We now have the challenge of addressing all the issues that have been raised. As was reflected today, not all the evidence that we have received is pushing us in the same direction. There are difficult issues that we will have to get to grips with. I hope that the oral evidence sessions that we have had will help to concentrate our minds on the choices out there. It is our job to weigh up the evidence. This afternoon, which is the last of our five evidence sessions, has been stimulating.

I thank the people who have made today possible. I thank the clerks who have worked even harder than they usually do to make all the arrangements come together, and our hosts, Highlands and Islands Enterprise, especially Helen Rice and Deborah Ryles, who helped us with the arrangements for the meeting. I am sure that everyone will agree that it has gone smoothly. I have heard everyone praise the organisation and catering. I understand that the catering featured local produce, which is welcome, given some of the other evidence that we have been taking recently.

I thank everyone who has helped us to have an interesting and lively meeting that has cut to the heart of the issues in the bill. It has not made our job easier; it will mean that we need to consider what issues to address in our report. I thank everyone for their patience, evidence and stamina.

Our next meeting is on Wednesday 17 May, which is the day after tomorrow. We have a heavy workload.

Meeting closed at 17:29.

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