



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 13 September 2017**

**Session 5**



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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**  
**24<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

- \*Peter Chapman (North East Scotland) (Con)
- \*John Finnie (Highlands and Islands) (Green)
- \*Rhoda Grant (Highlands and Islands) (Lab)
- \*Jamie Greene (West Scotland) (Con)
- \*Richard Lyle (Uddingston and Bellshill) (SNP)
- \*Fulton MacGregor (Coatbridge and Chryston) (SNP)
- \*John Mason (Glasgow Shettleston) (SNP)
- \*Mike Rumbles (North East Scotland) (LD)
- \*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- Carole Barker-Munro (Scottish Government)
- Claudia Beamish (South Scotland) (Lab)
- Darren Dickson (Scottish Government)
- Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)
- Simon Hodge (Scottish Government)
- Liam McArthur (Orkney Islands) (LD)
- Barry McCaffrey (Scottish Government)
- Catherine Murdoch (Scottish Government)
- Jo O'Hara (Scottish Government)
- Ian Turner (Scottish Government)
- Jen Willoughby (Scottish Government)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Economy and Connectivity Committee

*Wednesday 13 September 2017*

*[The Convener opened the meeting at 09:00]*

### Decision on Taking Business in Private

**The Convener (Edward Mountain):** Good morning, everyone, and welcome to the Rural Economy and Connectivity Committee's 24th meeting in 2017. I remind everyone who is present to please make sure that their mobile phones are switched to silent. No apologies have been received.

Agenda item 1 is a decision on taking business in private. The committee is asked to consider taking in private its approach to scrutiny of the draft 2018-19 budget, which is item 5, and a review of evidence on the Forestry and Land Management (Scotland) Bill, which is item 6. Do all members agree to take those items in private?

**Members** *indicated agreement.*

## Islands (Scotland) Bill: Stage 1

09:00

**The Convener:** I welcome Liam McArthur, who has joined us to observe the session on the Islands (Scotland) Bill, which is the subject of item 2. This is the first evidence session on the bill, and I welcome from the Scottish Government Ian Turner, who is the team leader for community empowerment; Darren Dickson, who is a policy officer; and Kirsten Simonnet-Lefevre, who is a solicitor.

The committee has various questions. The first, which will develop theme 1, will be asked by the deputy convener, Gail Ross.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning. To start us off, will you comment on the development of the bill, including the involvement of the our islands, our future campaign?

**The Convener:** If whoever wants to answer looks at me, I will bring you in. It looks as though Darren Dickson has been nominated.

**Darren Dickson (Scottish Government):** I will take the question, given that I have been involved longest with the Government's islands policy work. I will try not to repeat what is in the bill documents and the helpful Scottish Parliament information centre briefing.

The bill's origins date back to 2014, when the Government produced the prospectus "Empowering Scotland's Island Communities". That was the first time that the Government signalled its commitment to look at bringing forward an islands bill. It led to the consultation in 2015, which talked about the provisions that would be in a future bill. In 2016, we made a programme for government announcement that committed the Government to introducing the bill that we are discussing today.

It is probably fair to say that the catalyst for the work that we are doing through the bill was the launch of the our islands, our future campaign by the three wholly island councils back in June 2013. Since then, the Government has worked closely with those three island councils—first and foremost through the island areas ministerial working group. Latterly, we have brought into the new islands strategic group the other three councils that have responsibility for island communities—North Ayrshire Council, Highland Council and Argyll and Bute Council. That is where we are today.

The Government is keen to ensure that the bill is about all inhabited islands. That is partly why ministers decided, last August, to bring the other

three councils round the table. We have worked closely with them through the islands strategic group, and they have helped us to shape and develop the bill. That work will continue as the bill progresses through its parliamentary journey and beyond in the drafting of regulations for the implementation of the national islands plan.

The current islands minister, Mr Yousaf, and his predecessor, Mr Mackay, have spent a great deal of time in not just speaking to the councils but getting out and about around the country, meeting island communities and speaking to them about the bill as well as engaging with them on wider island issues. I know that the committee was recently on Mull, and it was useful to read the information about that on the committee's web pages. We are getting out and engaging with people on the bill as much as we can.

**Gail Ross:** Quite a lot has changed, given the United Kingdom's vote to leave the European Union. Has the approach to the bill changed since the Brexit vote?

**Darren Dickson:** It is probably fair to say that the approach has not changed. The Brexit vote was last summer and the bill was announced only in September last year, so it has been running alongside the Brexit process. I imagine that the bill process will conclude in advance of any Brexit outcome, so it will be difficult to see any impact on the bill. We do not expect any significant or dramatic changes to the bill because of Brexit, although I do not want to prejudice any amendments that might be lodged at stages 2 and 3.

If the bill is passed with commitments to provisions for island proofing and a national islands plan, those are probably the areas in which the outcomes of Brexit might be addressed, as future legislation that is required will have to be island proofed and commitments will be made in the national islands plan.

**Gail Ross:** Are any issues that were raised in the pre-bill campaigning not in the bill as it has been introduced?

**Darren Dickson:** The bill is pretty much what was consulted on. The 2014 prospectus made a commitment to consider extending the powers under the Orkney County Council Act 1974 and the Zetland County Council Act 1974. Having looked at that with solicitors, colleagues across other offices and Marine Scotland, we think that it is clear that extending those acts would be difficult, partly because they are private acts and partly because how we handle legislation has changed over the past 40 years.

The provision in the bill is for a marine licensing scheme. I imagine that the committee will have

questions on that, so I will not go into further detail now.

**John Mason (Glasgow Shettleston) (SNP):** I have just a minor point. When the bill was prepared, was it a unanimous view that Skye should be included? The bill says that bridges should be ignored, but surely Skye does not have the problems with ferries and other transport that real islands do.

**Members:** Oh!

**The Convener:** I will let the witnesses gather their thoughts on that and how the bridge was taken into account. I am sure that we all agree that Skye is a real island.

**Darren Dickson:** This is quite a surprising issue. We have been asked three times whether Skye is covered by the bill, so people must not be reading the explanatory notes, which clearly state that Skye is included. The basis for that is that it is an inhabited island—according to the 2011 census, there are about 993 inhabited islands, and Skye is on that list.

**Peter Chapman (North East Scotland) (Con):** I will follow that up. Really remote areas on the mainland have all the same issues as the islands have—particularly Skye, given that it has a road bridge. Someone who is on an island relies on the ferries to get from A to B, but Skye does not have that problem. Many remote rural areas on the mainland have problems that are equal to those of the islands, so where do they fit into the bill, if at all?

**Darren Dickson:** Not at all is the answer to your question. It is a bill on the islands—that is what we were asked to draft and introduce and that is what we have done. I acknowledge your point about issues for remote rural locations on the mainland, but we are working within the scope of a bill that addresses the islands.

**The Convener:** The point is made.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I understand that the bill relates to the islands, but do you envisage it having any positive knock-on effects for the rural communities that Peter Chapman mentioned?

**Darren Dickson:** I imagine that it will. Island proofing and the national islands plan are key elements of the bill. Island proofing will have implications for our health boards, and many of our islands health boards have close links with mainland health boards, so it will probably tighten up that working relationship. It is not for me to comment, but the success or otherwise of island proofing may lead the Government to consider its approach to other areas.

**The Convener:** Before we move on, I remind the committee that when we have taken evidence, a lot of remote communities have said that they feel that they are islands, just as much as island communities are. That issue is specifically outwith the bill's scope, but I am sure that there will be questions on it as a result of the evidence, which we will direct to the minister when he comes to the committee.

After Stewart Stevenson comes in, we will move on to the second theme, which Rhoda Grant will lead.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** In planning, there is a series of definitions of communities. I will focus on remote rural communities, which, if I recall correctly, are defined as communities of fewer than 10,000 people that are more than 30 minutes' travel away from a community of more than 10,000. That captures every island that is proposed to be covered, but it would also capture places such as Campbeltown.

In drawing up the policy and drafting the bill, what consideration was given to using existing definitions that are used for a wide variety of purposes in local and national Government? That would mean that the word "island" was not wholly appropriate, but it would suggest a similar policy intention of protecting remote communities and supporting them in a proper way.

**The Convener:** I apologise to Darren Dickson—I am going to be rude and jump in. Stewart, I totally take your point, but can I ask you to hold that question until the minister comes? It is important that he is the one who answers such questions.

**Stewart Stevenson:** I am entirely content to do that because the question is now on the record, but I point out that I framed it in relation to the formulation of the policy.

**The Convener:** I totally understand. Christine Grahame said when somebody asked a question yesterday that that was a clever way of doing it. I accept the premise and will make sure that you get a chance to ask the minister.

**Stewart Stevenson:** Thank you very much.

**Rhoda Grant (Highlands and Islands) (Lab):** The bill is largely enabling legislation but, as I speak to constituents, I know that there is a huge amount of expectation about it. I fear that it will be a huge disappointment, because I can see nothing tangible that will come out of it. Everything will follow after, but the bill will make no real difference when it is enacted. Is that the case or will people see something tangible as an outcome of the bill?

**Ian Turner (Scottish Government):** You are right to say that the bill provides a framework for

action in the future in relation to national islands planning and particularly for island proofing. Island proofing is designed to ensure that the interests and needs of island communities are placed at the centre of future legislation, policies, strategy, and service design and delivery.

Although the bill is hard to connect to tangible local actions, it will certainly have an impact. It will ensure that island communities are involved in the decision-making processes early enough to have an impact on what happens in their communities. What that impact is and what the future policies and strategies will be is obviously hard for me to say, but that will come through the actions that are taken over time.

**Rhoda Grant:** The national islands plan has the potential to make a difference, but would it have been possible to have a plan without the legislation?

**Ian Turner:** We could have had the plan without legislation—that would have been the alternative to legislation. However, we thought that the rigour, transparency, scrutiny—particularly by Parliament and others, including island communities themselves—of the work being undertaken by the Government and the consultation that legislation would require would produce a different level of impact from that of just having a national plan that was designed by ministers. Having the plan in statute means not only that the Government will have to prepare the plan following the passage of the bill but that it will have to review the plan after five years and keep it going.

The bill is not just for now; as Darren Dickson said, it will maintain the momentum that arose from the our islands, our future campaign. That led into the different groups that ministers formed and then into the bill, which will keep the momentum going so that island communities continue to be a focus in the future. Moving away from having a bill could mean that the priority changed and that the Government moved on to something else. With a bill, that cannot happen, because the statute means that the measures must be in place.

09:15

**Rhoda Grant:** What do you envisage will be in the national islands plan? What additional powers will there be for islands in relation to, for example, transport, digital connectivity and control over the marine environment? What is the expectation?

**Ian Turner:** As the bill says, the purpose of the plan is to set out

"the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities".

We do not set out in detail what should be in the plan. That is partly because one of the first things

that we will need to do is consult the people who are interested in and will be affected by the bill. In doing that, we will find out people's priorities, which we will get into the plan.

There will be all the big issues that we would expect to see in the plan—transport, health, digital connectivity and so on—but what that will mean for powers or commitments that might be given will come up during the consultation process. It would be wrong for me to sit in Edinburgh and say, "These will be the priorities of islands in the future."

**Jamie Greene (West Scotland) (Con):** I get the impression from speaking to folk in island communities that, although people were excited about and welcomed the bill's introduction, there is, as Rhoda Grant said, a great deal of disappointment about the lack of content and specifically about the lack of an overall objective in the bill. Will you comment on that? For example, is it the bill's purpose to grow the population or facilitate economic regeneration? People have commented that there are few overarching aims or ambitions in the bill. Given that we could do much of what the bill does without having a bill, is it just a bill for a bill's sake?

**Ian Turner:** I do not think that it is just a bill for a bill's sake. The national islands plan is about

"improving outcomes for island communities".

Just one aim, such as increasing the population, might not capture the different needs of all the islands across Scotland. Not all islands necessarily have a depopulation issue; some do and some do not.

Rather than prioritise one overriding issue over others, the national islands plan needs to cover the issues that arise across the islands and to ensure that the Government and its partners in local authorities and health boards are part of the plan. It is about bringing the partners together so that there is an overall strategy and an overall objective.

Things might change over time. An objective that is relevant now might not be relevant in 10 or 15 years' time and might need to be changed. The bill's purpose is to make sure that we maintain a focus, now and in the future, on islands issues.

**Jamie Greene:** Is there a worry that we are missing a trick by not specifying the issues that affect island communities? Those issues are long standing and will not go away overnight or even in 10 years' time—I am thinking about access to healthcare, affordable transport, affordable housing and all the other things that we have heard about from people who have given evidence to us.

Do we have a unique opportunity to use primary legislation to ensure that the minister or Government of the day will address those issues, rather than leave things wide open by referring to a strategy, the contents of which we have no idea about? Do island communities not deserve an opportunity to have such issues properly addressed through the bill, rather than left to the minister?

**Ian Turner:** The bill could contain a list of issues that must be included in the islands plan. It would have to be a non-exhaustive list, because issues that we do not anticipate now could arise during the consultation or in the future.

I think that you are right to expect transport and digital connectivity to be in the plan, but I am not sure to what extent requiring their inclusion would change things; this is about what ministers say about the issues and the objective of bringing things together as a whole.

The minister has always made it clear when he has talked about the bill that he is open to ways in which it might be improved. If the committee feels that particular issues should be in there, he will be more than willing to consider them.

**The Convener:** I will bring in Liam McArthur, briefly.

**Liam McArthur (Orkney Islands) (LD):** Thank you, convener. I will follow up the comments made by Jamie Greene and Rhoda Grant. I do not necessarily have an issue with the legislation being enabling—it is about enabling island communities. I am happy to share with colleagues my perspective on why islands are different from mainland remote communities and how the benefits of island proofing could spill out to the ways in which policies develop and legislation impacts those remote communities.

However, there is a sense of expectation about what the bill will achieve. Rhoda Grant is quite right to say that there is a serious risk that the legislation will not match that expectation. People have a clear view of how island proofing would be valuable in dealing with the problems that they face because of the way in which policy and legislation have been developed and implemented. What capacity will there be through the bill—from the minister's intentions, based on your dealings with him—to look at existing examples of how legislation and policy work against the interests of islands, and to take early measures to address them? Promises on what will happen in the future can best be evidenced by a demonstration of a willingness to use island proofing and the purposes behind the bill to address some of the concerns that are real and present now.



**Ian Turner:** The bill is not retrospective, particularly in terms of island proofing; it is about future legislation, policies, strategies and services. That does not just mean when new policies are being developed but when they are redesigned or revised, so that other issues can come in—there are already many different routes. The bill raises the profile of a lot of the issues that members have talked about and how they can be addressed. The Government is willing and open to look at whatever we may do to bring forward the issue of what might be the appropriate route to make those changes. For example, if a health issue on a particular island needs to be looked at because the regulations do not quite work for the island, ministers are more willing than ever to look at how to adapt and change what is there.

The idea of island proofing is that one size will not necessarily fit all in future, particularly with regard to legislation. We might need to tweak legislation or make sure that it focuses on island issues in a particular way. That applies not just to primary legislation; it includes secondary legislation, where a lot of the detail of how we deliver policy is often given. Ministers are more than willing to consider what options might apply, but the bill as it stands is about the future of island proofing; it is not retrospective in the way that has been raised.

**Rhoda Grant:** The more that I hear, the more puzzled I become. The three island councils are clear about being empowered and getting decision-making powers that they do not have at the moment. They have the infrastructure to deliver decisions about transport, connectivity, planning the marine environment and so on. The island councils can preside over such matters and deal with them. Smaller islands, such as Barra, Westray, Unst and Mull—which the committee visited—are talking about being empowered over such things as education, care in the community and healthcare.

I do not know how you can draw up an islands plan that meets all those expectations in those very different areas. Some island groups have the infrastructure to deal with such things, but how can small islands that do not have a council and are perhaps lucky to have an active community council take those powers and use them? If they cannot, does that mean that no island community will get those powers?

**The Convener:** From the evidence that we have heard about islands, that question cuts to the chase.

**Ian Turner:** The bill needs to be seen alongside a lot of other work that is being done. For example, I do a lot of work in community empowerment and implementation of the Community Empowerment (Scotland) Act 2015.

You mentioned Mull. There is a fantastic development trust there, which is doing a lot of work in and for the community. The bill is not necessarily what the trust needs to enable it to do things; it is about it owning its own land and making decisions in its own way. Members are right that, whether the trust uses participation requests through the 2015 act to get involved in the council's decision-making processes or the asset transfer powers to get more land that it can develop for its own purposes, the bill will not in itself matter too much. However, the overall strategy on the islands probably will matter to it.

If we talk about the Crown estate, which will be addressed in a separate bill, or the local democracy bill, which was mentioned in the programme for government last week, the question is what powers will be relevant to local authorities and communities in future and how they will be used. Ensuring that islands have their voice in those processes and ensuring that the Crown estate bill and local democracy bill are island proofed will be essential in ensuring that the powers go down to the people who can use them.

**The Convener:** Mike Rumbles will start us off on our next theme.

**Mike Rumbles (North East Scotland) (LD):** The theme is about island proofing. When we took informal evidence on Mull, communities told us that they were concerned that island proofing must not turn into a tick-box exercise. How will you ensure that that does not happen?

Looking at the 60-odd organisations that are mentioned in the schedule to the bill, I can imagine a situation in which one of them—let us not name any particular organisation—simply says, “Right, how does this affect the islands? Oh, that’s fine,” and ticks the box. The people on Mull suggested to us that the only way in which we can really island proof is that, when any of those organisations wants to do something, it should consult the islanders. That does not seem to have been highlighted in the bill. Would a good way forward be to put something in the bill to say that those organisations should consult islanders on new initiatives?

**Ian Turner:** The bill sets out the general duty on those organisations to have regard to island communities when they exercise their functions. That is the overall duty and, if there is going to be a significant difference, they must do an island communities impact assessment.

The bill also provides that the 60-plus public bodies in the schedule must have regard to any guidance from Scottish ministers on that duty. We need to consult on that guidance and go through the process of putting it together, which will include islanders. We expect that the guidance will

set out what the authorities will need to do consistently and transparently, including publishing information and consulting islanders. That is how they will need to comply with the duty.

There could be a lot of detail in the guidance, including about how public bodies might comply with the duty. We will always want a degree of local discretion for public authorities in how they do that. We do not want to say that they must do it in a certain way at all times because that may well lead to a tick-box approach. We need to be able to provide authorities with the ability to innovate, do things differently and consult islanders when they need to.

We expect consultation to be a key part of the process. We always consult when we do legislation. We always consult before we do a bill. Therefore, we expect the guidance to highlight when consultation will need to take place with islanders, including the need to ask the initial question whether a proposal will make a difference to islanders, before the public body even needs to think about doing an impact assessment. That will enable islanders to get in at the start of the consultation.

**Mike Rumbles:** I am not suggesting that you should be prescriptive about how it has to be done. You say that consultation could be part of the process, but should it not be a necessary part of it when those 60-odd organisations implement change? Some of the residents on Mull from whom we heard expressed their fear that the impact assessments are made in Edinburgh, Glasgow or wherever and do not deal with what happens on the ground in Mull. That is the experience of members of the public on Mull.

09:30

**Ian Turner:** Yes. Partly because that is the current experience, you would hope that, when island proofing comes in, it will not only put a legal duty on organisations but will also be about a culture change in how they do business. Community empowerment is often about ensuring that communities have the ability to participate in the decision-making process, and this is part of that. However, we do not want to make it overly complex for public bodies to do things—as you say, to be too prescriptive—because that tends to lead to more of a tick-box process in which they can just say that they have done what is required and think that, because they have sort of spoken to the communities, they can go ahead. That is not what this is about. Putting the requirement to consult in guidance gives us the flexibility to take a case-studies approach and show people what best practice is, which will come out during the process.

**Mike Rumbles:** Will the guidance say that public bodies must consult local people in the islands?

**Ian Turner:** At the moment, I cannot say what the guidance will say.

**Mike Rumbles:** That is the problem, is it not?

**Ian Turner:** That is partly because we have to consult on it and ensure that what is in the guidance is what people want.

**Mike Rumbles:** I understand, but that is the crux of the problem.

**The Convener:** When the bill was being drafted, the bill team and the minister must have considered the implications of island-proofing decisions, and any person who considered those implications must have considered their cost and would have had an idea of how much it was going to cost to island proof future legislation. However, I have not seen any indication of what that cost will be. What will it cost the Scottish Government on an annual basis to island proof its decisions? Do you have an estimate of that, or will the cost be met by councils as they implement decisions? I think that councils do not find it easy to estimate that cost.

Does Darren Dickson want to answer those questions, or is it still Ian Turner?

**Ian Turner:** I think that it is still me.

**The Convener:** Darren is probably thankful for that.

**Ian Turner:** The financial memorandum sets out the cost of the bill's implementation and the on-going cost of incorporating island proofing into the decision-making process.

**The Convener:** I understand that, and we are going to ask questions about that, but that is not what I am asking about. You have asked people to come up with an islands plan and they are going to do that. You must have had some idea of what was going to be in the islands plan. I am asking you how much it will cost the Government to ensure that the islands plan is implemented.

**Ian Turner:** Given the process that we have to go through, there are too many variables to say what the implications will be. The bill requires that, in producing any new legislation, policy or strategy, the Government must consider whether it will have a significantly different impact on the islands. If it will have, the Government must carry out an impact assessment that will draw out the features of that impact.

I cannot predict what the future plans will be—what the Government will do each time—therefore, I cannot predict what the impact assessments will find. However, as part of an

impact assessment, the Government will have to set out whether it can improve or mitigate the outcomes if the policy could have a negative impact on the islands. That will be part of the process. It is very difficult to predict what the outcome—and, therefore, the cost—of every new policy strategy or piece of legislation will be. In fact, it is probably impossible to do that.

**The Convener:** I understand that. The danger is that people on the islands will expect the Government to island proof its policy, which is going to cost a lot of money, but at this stage we have no indication of what that is going to cost.

**Ian Turner:** I do not think that it will cost a lot of money if we do it properly—if we incorporate it into the consultation process, which we have just discussed, and if we figure out what impact the policy will have on the islands through an impact assessment. We do a lot of these things already; we just do not talk about the process in quite this way. The bill will make the process much clearer and more consistent, and how we reach decisions will be much more transparent. Whether that will incur additional costs in what we do is hard to say at the moment, but it should just be part of the process.

**The Convener:** Okay. However, I stand by the fact that people on the islands will expect to have the same ability as people on the mainland to receive medical care, for example, and that there will be a cost to that.

**John Mason:** I would like to pursue the theme of island proofing. Will consideration be given to looking retrospectively at previous legislation, plans or anything like that, or is this purely about island proofing going forward?

**Ian Turner:** As I mentioned to Mr McArthur, as it stands, the bill is about the future and there is no retrospective element to it.

**Mike Rumbles:** You said that it was impossible to judge whether it would cost any more money. However, as the convener said, there is an expectation that, if the policy is to make any difference rather than being a tick-box exercise, there will need to be extra funding for the islands, which will not be needed on the mainland, to implement the policy in regard to certain issues. In the forthcoming Scottish Government budget, will there be a budget line for the bill with regard to island proofing, other than in the financial memorandum?

**Ian Turner:** I cannot say at the moment.

**The Convener:** I have one further question before we move on. If a model is developed for island proofing to encourage a consistent approach to be taken by all public bodies, what do you envisage would happen to a public body if it

failed to comply with the approach that is laid down in the bill and in the plan?

**Ian Turner:** With regard to compliance, each public body will be under the new legal duty to perform island proofing on all its functions as it comes through. Public bodies that fail to comply with their legal duties will be held accountable through their normal accountability arrangements. For example, ministers are accountable to Parliament and to the electorate; in performing their functions, local authorities are accountable to their councillors and to local communities; and, with regard to the accountability arrangements that will come through, other bodies are the same. That is where the compliance aspect will come in.

**The Convener:** We move on to the next set of questions.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Good morning. You have heard about the themes that everyone is talking about. I will turn to constituency boundaries.

Under schedule 1 to the Scotland Act 1998, Orkney and Shetland are fixed as two of the 73 Scottish constituencies. The parliamentary constituency that takes in the Western Isles does not currently have that protection, but section 13 of the bill will provide it. However, there are islands in different local authorities where the people feel overlooked and forgotten about. They feel that what has happened on the mainland has not been replicated or taken care of in the islands.

If we have councils of varying sizes, why can we not have a further islands authority? Has any thought been given to the constituency and local authority structure of island groups? One of my colleagues is going to ask questions about members shortly, so I would like you to contain your reply to the islands. People in Mull feel that they are forgotten about, so should we not have another authority that would take in all the islands? It would be stretching it quite a bit, but people would then feel that their particular island was being looked after.

**Darren Dickson:** The commitment for the Western Isles stems back to the prospectus in 2014, and it was a specific ask of the Western Isles at that time. For the past couple of years, the Scottish Government has not had the power to act on it, but, under the Scotland Act 2016, the power has been transferred from Westminster to Holyrood and we now have the ability to deliver on the commitment that was made in 2014. That is why the focus is on doing that for the Western Isles. Some would say that it is an anomaly that Orkney and Shetland have that protection at both Westminster and Holyrood but the Western Isles has it only at Westminster, and that is why the Government is delivering it.

I will deal with the question of constituencies first and will come on to local authorities. The Local Government Boundary Commission for Scotland undertakes reviews of constituencies for the Scottish Parliament, and I believe that it will carry out another review of the Holyrood boundaries in the not-too-distant future. It might make recommendations for changes in that regard, but I am not sure about that. The committee will speak to the boundary commission soon, and you might want to raise that point.

I take your point about local authorities, but my current understanding—this may be more a point for the minister to answer—is that the Government has no intention of considering local authority boundary changes at present. Ultimately, it would have to be a Government decision.

**Richard Lyle:** Have you ever dealt with the Electoral Commission?

**Darren Dickson:** Do you mean the Electoral Commission or the Local Government Boundary Commission for Scotland?

**Richard Lyle:** I mean the boundary commission in relation to changing boundaries. I dealt with it several times and it is not easy to get it to go along with a change even when a boundary passes down a street and then goes off at a tangent. However, I will park that issue. Is there no thought of creating an islands authority?

**Darren Dickson:** No, not under the bill.

**The Convener:** Fulton, do you want to address that local authority point?

**Fulton MacGregor:** My questions follow on from Richard Lyle's point about constituency boundaries, but I will move on to the member wards. We heard a wee bit of evidence on the issue when we were in Mull and had quite an interesting debate with the local authority there. Do you have any indication of how that idea might work? There is talk of having one or two councillors for an island if it is populated. From what I heard, that might be a good idea. Have you any idea how that system might work in practice and how long it would take to implement?

**Darren Dickson:** At this time, we do not have any indication of that. The main reason for that is that, assuming that the bill is passed, the Local Government Boundary Commission will be asked to undertake reviews of the six local authority areas that will be impacted and bring back recommendations for ministers. The expectation is that the recommendations could be implemented in time for the next local government elections, in 2022. The Local Government Boundary Commission would have to do that work, and we would get an indication from that.

**Fulton MacGregor:** Are the recommendations likely to include considerations such as the number of local councillors, whether that number is likely to change, the practicalities of how councillors might travel between islands and so on?

**Darren Dickson:** Yes. The Local Government Boundary Commission would make the recommendations, and I assume that it would take into account the logistics of travel. I might be wrong about this, but I think that, although Mull has a councillor at the moment, Tiree does not. We met the people from Tiree—the minister was there recently—and the issue was quite close to their hearts. They felt that they lacked a connection with the local authority because they did not have a councillor on Tiree. However, Tiree has a very small population. We will have to look at that as well.

**Fulton MacGregor:** Yes, we met the councillor who lives on Mull and she took part in the evidence session that we held, which was good.

**The Convener:** We will move on to the next theme. Peter Chapman is going to lead on that.

**Peter Chapman:** My questions are about marine development. The bill provides a regulation-making power for Scottish ministers to establish a marine licensing scheme for development activities. I wonder what “development activity” means in practice and what powers are envisaged. Will the provision for marine development licensing apply to all Scotland's islands?

**Ian Turner:** Section 16(1) of the bill sets out what “development activity” means:

“(a) construction, alteration or improvement works of any description (either in or over the sea, or on or under the seabed)”

and also

“(b) any form of dredging (whether or not involving the removal of any material from the sea or seabed).”

That is the encompassing form of what “development activity” means. The regulations can provide for exemptions within that, and specific exemptions that are not development activities are set out in section 16(2). That covers the specifics.

On whether the provision will apply to all Scotland's islands, the bill provides for an iterative process. It requires a local authority that has inhabited islands to apply for a designation to be made to ministers, so it would be for the local authority that wished to have more control in the seas around its islands to apply for that designation. That would kick off a process that would include the requirement that ministers consult before bringing any draft regulations for Parliament to look at.

In theory, the provision could apply to all Scotland's islands. However, in practice it will often depend on whether the local authority wants to take on the new powers.

**Peter Chapman:** Obviously, there will be further consultation. What is your timescale for that process?

**Ian Turner:** That would depend on when the application for designation was made. When a local authority submitted an application, we would have to consult on that, and there could be six different applications coming forward at different times or there could be more coming forward at the same time—we do not know. It would depend on what the local authorities wanted to do.

**Peter Chapman:** Will it be possible under the new powers for local authorities to say something about fishing activity around a particular island, or is that outwith the scope of the bill?

09:45

**Ian Turner:** The provision is specifically about construction, alteration and improvement works; it is not really about fishing. However, anything that is built in the sea could cause navigation issues, and that is where fishing might come into it. Fish farms are also excluded from that activity.

**Peter Chapman:** Fish farms are excluded.

**Ian Turner:** Yes, because they are covered under the planning regime. They are also excluded from the Zetland County Council Act 1974, which is where we took the process from.

**John Finnie (Highlands and Islands) (Green):** I accept that they are two completely unrelated issues, but I wonder whether you have had regard to the experience of marine protected areas and how they might interact with that provision.

**Ian Turner:** In this part of the bill, we have tried to give a practical impact to what we meant by extending the powers of the Zetland County Council Act 1974. Once the regulations are in place and the consultation is done, the provision will have to be developed in relation to all the things that already exist, including the national marine plan, marine protected areas and any local marine planning that might already be in place. It will need to fit into that structure, but I cannot say at this stage what will need to be done, because we need to work through the process.

**The Convener:** Let us move on to the financial implications of the bill with a question from John Mason.

**John Mason:** I realise that we have already touched on finance through questions from the convener and from Mr Rumbles, but I would like to press the officials a little more on what the

financial impact of the bill will be. I understand, from what I have heard so far, that there will be a plan and that there will be more of an onus on the Government, local authorities and others to consider the impact of decisions on the islands. However, if that is as far as it goes, I struggle to understand how the people on the islands will be greatly advantaged.

I was impressed by the representatives of Argyll and Bute Council when we met them. They know that there is no care home on Mull. They have thought about that and realise that there would be a cost to putting a care home on Mull. They know that the situation is having an impact on the community, because when people want to visit their relatives in a care home they have to go to the mainland. Nevertheless, having thought about it, the council has decided that the costs prohibit it. I therefore struggle to see what difference there will be in the future if there is no money to put a care home on Mull and all that we are telling councils to do is think about putting a care home on Mull.

**Ian Turner:** People are aware of the care issues on Mull and their implications. Island proofing is also about ensuring that other issues that might not be quite as clear or as thought through are thought through. However, you are right to say that the bill does not require local authorities to do something as a result of that. It would be quite onerous for them if, once they had done an assessment, they always had to do what they assessed was necessary. There could be quite a lot of cost involved in that. The bill puts a clear, transparent and—most important—consistent system in place so that people are at least aware of those issues and can start to tackle them in different ways.

**John Mason:** That answers my question. Thank you.

**The Convener:** That will be an interesting issue to deal with.

**Jamie Greene:** My question follows on from what John Mason has said. It is about a worry—which has probably been picked up over the course of this evidence session—that the bill does not require anyone to do anything other than create a plan and that island proofing does not require anyone to do anything other than consider. There is no budget indicated anywhere in the bill or the financial memorandum that would benefit the islands in a true and proper sense, nor does the bill empower local authorities to do additional things that they are not able to do at the moment, either through legislation or via additional finance.

That relates back to my earlier point about whether the bill goes far enough. Is the bill just enabling legislation or should it go further? Is there

an opportunity for us to propose further measures to make the bill stronger, so that it will bring meaningful change to the island communities?

**The Convener:** I am sorry, Jamie, but I am going to do the same as I did with the previous question. What you have asked about is something that we need to push the minister on, because it goes to the nub of the problem. If Ian Turner or Darren Dickson wants to offer a short answer to Jamie Greene's question, I am happy to take it, but they might feel that the minister is a better person to answer it.

**Ian Turner:** I think that the issue is what consideration might be given. The minister is probably the most appropriate person to ask about that because what Jamie Greene asks about the bill relates to the framework for providing that things can take place. The future actions that there will be thereafter are not necessarily a matter for the bill, because there are wider considerations. There is other relevant legislation, and other processes are taking place that the bill's provisions will impact on, because it will make clear what needs to be done in those processes and how that might be done. There will be plenty of opportunity to talk about the finances that might be required within the Crown Estate or within local democracy for any changes and power shifts that might come from the bill.

**The Convener:** I have a direct question on the financial memorandum. There is an estimated cost of £142,000 over the first five years of the implementation of the bill's provisions to draw up the islands plan—have I got that right?

**Ian Turner:** Yes. We estimate that it will cost £100,000 every five years to prepare the plan, which will involve staff time and administrative costs. The annual progress update will cost £8,400, and adding the cost of that over five years to the £100,000 gives us the figure of £142,000.

**The Convener:** What strikes me about the consultation is that, although there might be overarching issues for the islands, each island has individual issues that are critically important to it. Given the number of inhabited islands that there are around Scotland, £142,000 will not go very far—especially if the Government gets to use the residue of that money to come up with an overarching plan.

**Ian Turner:** That is the administrative cost of the plan, but it is not necessarily the cost of any actions that might arise from it.

**The Convener:** I understand that that cost is nothing to do with the actions. Nevertheless, if you are going to use consultants or experts to prepare the plan, the money will amount to a lot less than £10,000 per island. That is not a big figure, and some of the bigger islands will have more complex

problems and will require a more complex plan. Are you sure that you have got those figures right? My personal experience of drawing up plans in the private sector tells me that that figure is way off target.

**Ian Turner:** We base the figure on the costs of the national plans and other large plans that the Government has costed in administrative terms.

**The Convener:** I understand your answer, but I reserve my position on that.

I invite Liam McArthur to make a final point.

**Liam McArthur:** I have heard the discussion about the financial memorandum. From my perspective, island proofing will expose the issue and, if there is a case for additional funding, it will make that case more compelling. I therefore have less of a problem with the figures in some respects.

However, the bill will need to demonstrate its mettle in those areas where there is not necessarily a financial cost and the irritation is that the way in which legislation has been formulated and enforced, or the way in which policies have been developed and implemented, has a cost for island users—whether island businesses or households—because, although it makes sense in a mainland or urban context, it makes no sense in an island context. The notion is that the bill is only about developing things that will cost money, but, from my perspective—I presume that this will be part of the development of the bill—there is an expectation that the bill will reduce costs in some instances by making policy and legislation apply in a more rational and commonsense way in island communities and, indeed, remote communities on mainland Scotland.

**Ian Turner:** I think that that is the case, but it is a difficult case to make because we do not have any examples to use, which is why it is not referred to in the financial memorandum. I do not think that we could provide a reasonable estimate of what any savings might be. However, as I said previously, the bill is getting away from the idea that one size fits all.

If, at the moment, there are costs that can be adapted and changed for the islands so that the cost to the authority or, in particular, the cost to service users or whoever the policy, strategy or services are affecting is lower, that is a good thing. We may reduce those costs and that may have an impact on those people's day-to-day lives.

**The Convener:** Thank you. That is the end of our questions. I just want to clarify something that I said about the amount of money that will be available for each of the inhabited islands. It is not £10,000 per island for each plan, but £1,000 per

island. To me, that will not even scratch the surface.

I thank Ian Turner and Darren Dickson very much for their attendance. I am afraid that Kirsten Simonnet-Lefevre did not get in, but I thank her very much for attending.

I suspend the meeting for four minutes to enable a changeover of witnesses and to allow the cabinet secretary to take his place.

09:56

*Meeting suspended.*

10:01

*On resuming—*

## **Forestry and Land Management (Scotland) Bill: Stage 1**

**The Convener:** Item 3 is the final evidence session on the Forestry and Land Management (Scotland) Bill. I welcome Claudia Beamish, the reporter on the bill for the Environment, Climate Change and Land Reform Committee. From the Scottish Government, I welcome Fergus Ewing, the Cabinet Secretary for Rural Economy and Connectivity; Ginny Gardner, who is the head of forestry devolution; Carole Barker-Munro, who is the bill manager; Catherine Murdoch, who is the deputy bill manager; Barry McCaffrey, who is a solicitor; Jo O'Hara, who is the head of the Forestry Commission Scotland; and Simon Hodge, who is the chief executive of Forest Enterprise.

**The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing):** This is a welcome opportunity to give evidence on the Forestry and Land Management (Scotland) Bill. The forestry sector is hugely important to Scotland—to rural Scotland, in particular. It is the bedrock of many rural communities and supports a huge range of businesses: it is worth £1 billion a year and supports 25,000 jobs. The forestry sector is a very important part of our rural Scottish life.

The bill is the first primary legislation on forestry since the Scottish Parliament was reconvened in 1999. As the bill progresses through Parliament, we are committed to continuing the consensual approach that we demonstrated in the forestry debate that we had in January. I met bilaterally with all the political parties prior to the bill's introduction, and I offer to do so again between stages 1 and 2, if that would be of interest to members.

The bill is about completing the devolution of forestry, which is a manifesto and programme for government commitment. I hope that the policy commands a degree of cross-party support. Following devolution, forestry will be fully accountable to the people of Scotland, through Scottish ministers and the Scottish Parliament. Funding for forestry will continue to be provided via the Scottish budget, which is scrutinised and approved by the Scottish Parliament. New organisational structures are being created for forestry to deliver the functions that are conferred on ministers, and new collaborative—I emphasise that word—cross-border arrangements are being established for functions that are best dealt with through co-operation with other Governments.

I have been listening to stakeholder views about the new structures—in particular, views about bringing the policy and regulatory arm of the

Forestry Commission Scotland into the Scottish Government. I understand that some people are concerned that that may lead to a loss of skills and interchange, such that forestry may somehow be lost within the main stream of the civil service. Without in any way denigrating or diminishing those concerns, to which I have listened carefully, I do not agree that that will happen. Forestry will be at front and centre of the rural economy and we will continue to need skilled and experienced staff to deliver our ambitions.

Over the summer, I had the pleasure of visiting all five conservancy offices, from Dumfries to Dingwall, with Jo O'Hara. I did so specifically to meet the staff in order to learn about and discuss their concerns, and to reassure them and, perhaps, dispel some of those concerns. The new structures are the best way to deliver our ambitions for forestry: I am committed to continued engagement with staff and the sector in order to address concerns, as the structures are set up.

In short, the new arrangements will continue the ethos and spirit of Forestry Commission Scotland. I am entirely committed to that.

I will turn to the bill to comment on its main provisions if I may, convener. I am trying to stick to the time limit, so I ask you to cut me off if I go on too long—because that happens sometimes, apparently.

**Mike Rumbles:** Surely not, cabinet secretary.

**Fergus Ewing:** Thank you for that.

Part 2 of the bill is about forestry functions on tree health and silvicultural material testing functions. The bill will place two important new duties on Scottish ministers: to “promote sustainable forest management” and to prepare, publish and “have regard to” a Scottish forestry strategy. The strategy will be the place to set out high-level objectives, priorities and policies for the economic, environmental and social aspects of forestry. It will be where we will define “sustainable forest management” and state how we intend to promote it. We anticipate that the strategy will cover such areas as woodland creation, timber production and development, increasing community engagement, environmental impacts, urban forestry, and the threats from pests, diseases and climate change.

Part 3 deals with land management and provides powers for the minister to manage the national forest estate in a way that contributes to multiple outcomes. That part also introduces new powers for ministers to manage land for the purposes of sustainable development.

Part 4 is the new regulatory regime for felling trees and restocking. The regime details are to be set out in secondary legislation in order to enable

a more flexible, agile and risk-based regulatory regime.

Part 5 contains general powers to enable ministers to carry out their duties, and part 6 has general and final provisions.

In conclusion, I look forward to working constructively and collaboratively over the remaining passage of the bill in this session in order to complete the devolution of forestry to the Scottish Parliament. I look forward to working with the committee to that end.

**The Convener:** Thank you, cabinet secretary. There are a lot of questions to get through. I will kick off straight away with Jamie Greene's questions.

**Jamie Greene:** Good morning to the panel and the cabinet secretary. The structural and organisational changes that are proposed in the bill are already something of a fait accompli, so I hope that the cabinet secretary will forgive me for taking a step back to ask him, given the many positive things that we have heard about the Forestry Commission Scotland and FES, what is wrong with the status quo?

**Fergus Ewing:** The status quo is what we are changing: we seek to complete the devolution of forestry to make it accountable to the people of Scotland, through the Scottish Parliament and the Scottish Government.

At the moment, we have two separate arms, although they are regarded as one and, indeed, work as one. They work extremely collaboratively; Jo O'Hara and Simon Hodge and their teams work as one, but they are two—Forest Enterprise Scotland and the Forestry Commission Scotland. The Forestry Commission Scotland is part of the Forestry Commission UK, which is part of, and is accountable to, the Department for Environment, Food and Rural Affairs.

Instead of that arrangement, Forest Enterprise Scotland will cease to be an agency of the Forestry Commission and will become an agency of the Scottish Government, and the Forestry Commission Scotland will become a division of the Scottish Government. However, from the point of view of the staff and their work, they will carry on as is. The new arrangements will improve accountability; Parliament will have the scrutiny role that will bring forestry to centre stage in a way that I suggest has not necessarily been the case since Parliament was reconvened. I think that that will be a very good thing.

**Jamie Greene:** The cabinet secretary mentioned increased accountability and scrutiny resulting from the changes. In last week's evidence session, the concern was raised that, at the moment, the two organisations report



separately and are, therefore, more accountable than they would be if they were integrated into the Scottish Government. What is your view on that?

**Fergus Ewing:** I do not share that concern. My experience over the past year and a bit has been of working extremely closely with Simon Hodge and Jo O'Hara, and I think that the new arrangements will clarify accountability and responsibility. At the moment, responsibility is diffuse, because the Scottish Government is substantially the funder, although the Forestry Commission is a UK body.

That is my experience. Simon Hodge and Jo O'Hara have been in place for some time, so it might be useful for the committee—with your permission, convener—to get their insights from the front, as it were. I appreciate the importance of the question that Mr Greene has asked.

**Jo O'Hara (Scottish Government):** I am in the odd position of being a forestry commissioner as well as a civil servant who is answerable to Mr Ewing, so I live and breathe the issue every day. The situation is uncomfortable, it is awkward and it is unclear. The role of commissioner has a statutory basis in the Forestry Act 1967, but the reality is that policy is devolved—I answer on policy—and the budget comes from the Scottish Parliament.

The new arrangements will enable the legislation to catch up with the reality of what is happening and make it much more clear and transparent to anyone on the outside. People understand the positions of a minister and an official, but I constantly have to say that I am also a commissioner and explain how that fits into things. The new arrangements represent modernisation of the legislation so that it can catch up with the reality in practice.

**Simon Hodge (Scottish Government):** I echo what Jo O'Hara said, entirely. In addition, Forest Enterprise Scotland manages the national forest estate, which is owned by the Scottish ministers, but we are accountable in some measure to a cross-border body for how we do so. Again, that is sometimes difficult to handle. There is an opportunity here to bring things into better alignment, in terms of accountability to Scotland.

**Jamie Greene:** Thank you for that clarification.

The cabinet secretary mentioned some of the concerns that have been raised with us in previous meetings about expertise being lost as people become part of the civil service, as opposed to being part of a separate organisation that is focused on forestry. I appreciate the cabinet secretary's commitment to ensuring that that does not happen. Can we strengthen the bill to ensure that there is no way that current expertise can be lost as a result of the restructuring?

**Fergus Ewing:** I do not think that expertise will be lost, and we value the expertise of the staff very highly. The woodland officers—of whom I met a great many in the second-last week of August, as I said—have the expertise in silviculture. They will continue to deal with applications and they—not ministers—will ensure that good practice and forestry standards are adhered to. They will ensure that we do not replicate the mistakes of the past—for example, planting on peatlands—and they will ensure that the forestry strategy is fulfilled.

This will be the first time that there has been a statutory duty to have a forestry strategy. I am interested in hearing the wider views of the committee on that, because it seems to me that that duty presents the opportunity to set out clearly the functions, which will then continue to be delivered by staff.

Local staff will remain vital sources of regional knowledge—I have become aware that there are vastly different circumstances in relation to silviculture in different parts of the country, given the different terrains and habitats. Forestry decisions will continue to be taken by forestry experts; they will not be micromanaged, nor will there be centralisation of functions.

Let me finish with this point, on which it might be useful to get views from Simon Hodge and Jo O'Hara, who are the experts. The forestry strategy will give us an opportunity to set out the target of planting 10,000 hectares per annum—and rising—which I think we have agreed across the political spectrum. There will then be a statutory duty in that regard, which I will have to fulfil. Simon Hodge or Jo O'Hara might add to that, because the question is extremely important.

**The Convener:** Please be relatively brief, because there are quite a lot of questions and I would like to ask two questions before we move off this theme.

10:15

**Simon Hodge:** Forest Enterprise Scotland manages 1.5 million acres of Scotland, and a range of technical expertise is essential to do that. It is my job to ensure that that expertise continues and that it provides Government with a practical outlook on land management. My plea is that it involve not just forestry and foresters—although I am one, and they are very important—but civil engineers, landscape architects, land agents, geographic information systems technicians and procurement experts. A huge range of professional expertise is critically important, and I am very positive about the way in which the Scottish Government is supporting that.

**Jo O'Hara:** From my point of view, the focus on forestry, rather than on what is in the legislation, is the important thing. We have found—Jim Mackinnon pointed this out in his report, with which I know members are familiar—that the increased focus on forestry brings with it an increased focus on forestry skills for us, as the regulator and Government's adviser.

Regardless of the legislation, the important thing is that the need to have professional foresters advising Government on forestry had been identified. We already have work streams in process looking at how we develop and train woodland officers. That is absolutely important and crucial, particularly in the context of the Scottish forestry strategy.

**The Convener:** When we were hearing evidence last week, Malcolm Crosby said that people who work in both organisations have extreme concerns about the restructuring. Cabinet secretary, in your opening statement you said clearly that those concerns were not reflected in what you heard on the ground when you visited the offices. Malcolm Crosby said that people were not expressing their views up the chain. Can you assure the committee that Malcolm Crosby is wrong and that there are no concerns? He was quite clear about that.

**Fergus Ewing:** I did not say that I heard no concerns when I went round the five conservancy offices. Obviously some people had concerns. That is absolutely clear, and I should make it clear, if I did not do so previously.

In the discussions that I had with Jo O'Hara and the local conservators, we were able to provide a number of basic assurances. I have discussed those with Malcolm Crosby, whom I think I have met along with the trade union representatives across the board on two or three occasions. It is very important that I continue to engage with those people: I will do that.

First, there will be no compulsory redundancies. Secondly, the local office network will remain. It is the vital source—the hub—of the Forestry Commission Scotland's activity. In a sense, what is happening is not actually a reorganisation. There are two bodies at the moment—Forest Enterprise and the Forestry Commission—and there will continue to be two bodies, so the suggestion that there is one body at the moment is not correct in law. In practice the bodies operate as one, although Forest Enterprise operates as the trading arm and the Forestry Commission operates as the regulatory arm. It makes sense to separate the regulation and implementation functions, rather than have them being done by the same body.

I appreciate that Malcolm Crosby has sincerely held concerns. Some staff expressed those to me; others did not. However, that was not the most important thing in the discussion. The most important thing was that I gained a sense—Jo O'Hara was at all the meetings and can give her perspective—that staff were reassured that they would be valued as the people who deliver the forestry policy for Scotland. They are proud of that; it is a calling and a vocation. It became evident to me that that is the case and that we must preserve the ethos and spirit of the Forestry Commission. Why on earth would we not want to do that? It is a precious thing in itself.

Although there are concerns, I felt that the visits were useful in helping to dispel some of them. However, I certainly would not say that Malcolm Crosby was wrong—far from it. He is doing his job and representing his members, and I respect that.

**The Convener:** I am going to leave that there, cabinet secretary, because there are a lot of questions. The next one is from Stewart Stevenson.

**Stewart Stevenson:** Thank you, convener. I want to move to part 3 of the bill, "Management of Land by Scottish Ministers". I have a number of issues, but I will start with the one that has come up in our deliberations thus far. Part 3 starts with:

"The Scottish Ministers must manage forestry land in a way that promotes sustainable forest management."

The definition of "forestry land" is provided at section 10, the national forest estate is defined at section 11 and section 12 states that

"Ministers must publish a description of forestry land".

However, the bill does not address the issue of what sustainable forest management is. What does the cabinet secretary think it is, and how should lawmakers such as ourselves, and the courts in future, consider what sustainable forest management is?

**Fergus Ewing:** As I think I said at the outset, what sustainable forest management is will be set out in the forestry strategy. That will be the right place to go into the details of that, and that is our plan. I defer in this matter to Jo O'Hara, who perhaps can amplify that basic answer.

**Jo O'Hara:** There is a question here of what happens in practice and what is in legislation. There are working definitions of sustainable forest management at a very high level; at the most basic level, it means that you replace trees when you harvest them—that is the basic understanding. There are various understandings of the definition between those levels.

The one that we use across the UK, and which all four Governments in the UK have signed up to,

is the UK forestry standard. It is well understood and regularly developed. That is the sort of thing that we will get into in the Scottish forestry strategy, where we will say, “This is the current interpretation of ‘sustainable forest management’.” Because it is a developing science, that is probably a more appropriate place to discuss it, and that is where it will be laid out.

**Stewart Stevenson:** That is fine, and I am comfortable to hear you say it, but under “Forestry Strategy”, section 3(2) of the bill says that the strategy must do various things and includes reference to

“policies with respect to the promotion of sustainable forest management”

and setting out

“other matters with respect to the promotion of sustainable forest management.”

Section 3(3) talks about

“the conservation and enhancement of the environment by means of sustainable forest management”.

There are plenty of references to how to implement it, but there is no duty in what is before us to help us understand what it is that is being implemented via the strategy. Would it therefore be helpful for what I have just heard Jo O’Hara say to be more clearly expressed in the bill—for example, at section 3(3)(a), which mentions

“the economic development of forestry”?

I know that the forest industries—which do not get a great deal of reference—have concerns about ensuring that a continuous flow of forest raw materials will be delivered to them. I am not sure that I see that matter expressed in the bill. There might be some gaps—perhaps they are gaps in my understanding rather than gaps in the bill.

**Fergus Ewing:** I think that placing a definition in law in the bill would mean that the definition could not be updated to reflect changes.

I think that I am right in saying that sustainable forest management is not a static but a dynamic concept. As a relative newcomer to this area, I have read the forestry standards, of which there was recently a light review. I read some of them, and I did not understand every part of them, because I am not a silviculturist, nor am I qualified in forestry.

The point is that the forestry standards have recently been reviewed—they are dynamic, not static. From a technical drafting point of view, the risk is that, if you place the definition in the bill, it might become outmoded or restrictive in, say, a decade’s time. Therefore, the place for the definition is in the forestry strategy. That is certainly not an attempt to achieve anything other than the flexibility that we seek.

In response to Mr Stevenson, let me say that it is essential that we recognise the needs of the economy and the need to provide a continuing ready supply of productive timber for our sawmills for oriented strand boards. I am thinking of companies such as Norbord and EGGER, BSW Timber, James Jones & Sons and Glennon Brothers and the whole panoply of companies beneath them that are such a crucial part of our economy. We need a balance, of course, but Mr Stevenson is right that we must not neglect the economic aspects.

**The Convener:** I think that I hear somebody saying that there are other timber companies outwith the cabinet secretary’s constituency that may also be relevant. On that note, does Stewart Stevenson want to follow up?

**Stewart Stevenson:** We are, of course, talking about land that is forestry land and, therefore, Government land. We could legislate to cover private land, but the bill does not try to do that. One thing that has arisen is the matter of how the forestry strategy will be dealt with in parliamentary terms. Should it be submitted to Parliament in draft so that, before it is finalised, there is an opportunity for Parliament to consider its contents and suggest to ministers any changes that might be useful or appropriate? Is the cabinet secretary minded to think in those terms for the parliamentary process? The bill would not, I think, prohibit that from happening, but it does not mandate that it has to.

**Fergus Ewing:** The bill will by definition bring far greater scrutiny to the Parliament, which is accountable directly to the people of Scotland. The provision in the bill calling for there to be a forestry strategy further increases that accountability. As for the process that Mr Stevenson referred to, the process for developing a forestry strategy is well established and the bill includes a requirement to consult. I believe that laying the strategy before Parliament is the appropriate process in this case. Of course, I am very keen to hear the committee’s views after it has carefully considered all the evidence that it receives.

**The Convener:** Thank you, cabinet secretary. Fulton MacGregor has the next question.

**Fulton MacGregor:** You mentioned cross-border working in your opening statement, and other speakers have touched on it too. Can you expand on the conversations that you referred to about how that might be implemented?

**Fergus Ewing:** There are certain aspects for which it is prudent and right in principle to continue to work on a cross-border basis. One example is disease, which is an extremely serious issue for forest management. Some of the diseases have had disastrous consequences environmentally and

economically. Diseases do not respect borders and it is right that we co-operate across these islands and continue to work together on tree health in order to tackle the challenges of those diseases directly.

Secondly, for forestry science and research, much of which looks into tree health and disease, it is similarly important to continue to co-operate. We have an excellent facility in Scotland in the Forestry Commission that deals with research, but there are also similar groups of scientists and experts in England. Continued work in that area would be sensible and prudent. We also believe that it will ensure continuity for the sector, particularly for the scientists and the research.

As far as direct engagement is concerned, I have met the UK minister, Thérèse Coffey, and my Welsh counterpart, Lesley Griffiths. I am encouraged by the discussions between the Governments that have taken place so far. They all agree that collaboration on those matters should continue.

**Fulton MacGregor:** Can you clarify your opinion on whether Forest Research should be a single joint UK body? Is that your preferred option?

10:30

**Fergus Ewing:** We will co-operate across the UK. We are committed to ensuring that there are on-going effective cross-border arrangements where that makes sense and meets Scottish needs.

**John Mason:** I want to look at part 3 of the bill, sections 9 to 12; another member will pick up section 13 onwards—although they overlap a bit.

We have heard evidence that there is confusion over some of the definitions and titles and how they interact with each other. I am thinking in particular of section 10 on the national forest estate and the meaning of “forestry land” and “other land”. Similarly, there is the issue that forestry land should be managed to promote “sustainable forest development”, while “other land” is for “sustainable development”.

Could people be confused by those terms, or is that just the best that we can do?

**Fergus Ewing:** Having spent most of my life as a lawyer I would say that where there is legislation there tends to be an element of confusion. [*Laughter.*] That remark was not meant to be entirely flippant.

We must recognise that the national forest estate comprises forestry and non-forestry land. Members will be aware that Simon Hodge and his teams deal with a wide range of functions other

than the principal one of forestry. I give the examples of tourism at Glentress and the renewable energy scheme, which brings in an income of £10 million a year and has been developed very effectively by Forest Enterprise. Another example might be working with communities, such as in Abriachan, which is outwith my constituency although not far from my patch. Housing for local community groups is another function.

I mention those briefly because it is important to bear it in mind that Forest Enterprise is not solely devoted to forestry. Over the last century, since the Forestry Commission was established, it has accreted functions. More trees were needed after the first world war and that was the sole purpose of the Forestry Commission at that time. However, we must bear it in mind that, since then, tourism, the environment, housing, community interests and renewable energy have all been added to its scope.

We need to approach the issue of definition carefully and consider the questions that have been raised by the various stakeholders very seriously. That work has already started and we want to continue it with the committee. I am sure that Carole Barker-Munro can answer any more detailed and difficult questions if members wish to ask them.

**John Mason:** Does that mean that the Government will lodge amendments or make proposals of its own?

**Fergus Ewing:** Where there is a bill there tend to be amendments. If the member does not want to use the committee’s time by exploring those—to some extent—legal questions today, I can assure him that we are taking very seriously and looking very carefully at the definitions issues that have been raised. There will certainly be some amendments. We recognise that there is a need for clarity. I suspect that Barry McCaffrey or Carole Barker-Munro can provide better answers than I can.

**John Mason:** I cannot speak for my colleagues, but if you say that you are considering that evidence—

**Fergus Ewing:** If it is not out of order, perhaps I can suggest that, if the committee wishes, it should raise any specific questions on definitions with us as soon as possible and we will come back to you on that. We are happy to do that as quickly as possible.

**The Convener:** I have just checked with the clerks and our report is due in the next few weeks. There have been significant questions, so any clarity that you or your colleagues and assistants can give us would be much appreciated. As you will know, the time that we have in which to

consider that before our report needs to be complete is very short.

**John Mason:** I will leave that point, if others are happy. My other point is that Confor said:

“Management of forestry land should include a duty on ministers to maintain the productive capacity of the National Forest Estate.”

Do you have any sympathy for that?

**Fergus Ewing:** We have to ensure that. It is a very valid point. How it is encapsulated and dealt with in legislation is a mixed question of policy and drafting. However, I accept that Confor is absolutely right that we need to maintain the national forest estate’s productive capacity.

**Richard Lyle:** I will concentrate on the management of land to further sustainable development.

Among the many things that you have to do, you have to manage land. The Community Woodland Association stated:

“We welcome the proposed duty on Scottish Ministers to promote sustainable forest management ... but believe it would be useful to clarify the definition and use of this phrase”.

Scottish Environment LINK noted:

“There is very little reference of the UK Forest Standard (UKFS) in the policy memorandum (and no reference in the Bill)”.

What criteria will be used to determine whether land is being managed, or will be managed, for the purpose of furthering sustainable development?

**Fergus Ewing:** It is probably best if Simon Hodge answers that.

**Simon Hodge:** To be simplistic, it is about Government forestry land and other land. Our overall aim is sustainable management of the estate. In my mind, that principally falls out into land with forest on it, which we manage according to a set of standards that is appropriate to forestry, and land that does not have forest on it, which we manage to a set of standards that is appropriate to wider activities. The cabinet secretary mentioned some of those earlier; I add our agricultural activity to that.

Our current approach is to look to the principles of sustainable land use in the land use strategy, which lays out a good set of principles against which we plan in our strategic planning for the national forest estate. That is a good umbrella set of principles that is appropriate for the management of state land.

**Richard Lyle:** How do you propose that the forestry strategy, and the duty to promote sustainable forest management in the bill, will link to the UK forestry standard? Do the Scottish

ministers intend to go above and beyond—as I know the cabinet secretary always wants to—the UKFS by working to sustainable forest management?

**The Convener:** Simon, I think that you are in the frame to answer that question as well.

**Simon Hodge:** Yes. In one sense, we find it to be a well-codified process because the international sustainable forestry certification bodies have adopted the UK forestry standard. That means that we have an annual certification audit across all the forestry on the national forest estate that assesses us against, in effect, the UK forestry standard but codified as an internationally recognised standard for sustainable forest management. That assessment always looks for us to do more and improve and we are always positive and keen to do that, particularly recognising that our role is not only to manage land sustainably but to act as an exemplar for others to follow.

**Claudia Beamish (South Scotland) (Lab):** Good morning, cabinet secretary. As you heard earlier, I am here on behalf of the ECCLR Committee, to which I will report back. That committee will also do a report. I much appreciate the opportunity to participate.

In that context, I want to ask why the bill is not better integrated with other Scottish Government policies, such as biodiversity, deer management and climate change. At last week’s committee meeting, Willie McGhee of the Forest Policy Group said that the bill could be more innovative, Peter Peacock from Community Land Scotland said that the bill should be aligned with other legislation on economic and social development, and Maggie Keegan of the Scottish Wildlife Trust said that the bill could deliver more. Deer management was mentioned as the biggest threat to woodland in Scotland. Although I understand and respect the point that was made earlier about the forest strategy—that things need to be dynamic, not static—it is still valid to point out that there are overarching issues that we should consider including in the bill before stage 2.

**Fergus Ewing:** We are aware of the desire of a number of the witnesses and stakeholders to ensure that there is alignment across the various dictates and requirements of an integrated rural development and land use policy, including protection of the environment. Those matters are among those set out in the bill that must be considered and to which regard must be had in the preparation of the forestry strategy.

It is partly a question of legal draftsmanship. When one has a bill on forestry, the purpose is to set out the law on forestry. One does not, as a matter of form and draftsmanship, restate existing

duties that are there and to which regard must be had because they are existing statutory duties and provisions. As a matter of technical form, we would not restate things that are stated elsewhere. Law does not really do that, and nor should it, because where would you stop? Law has to be clear, carefully defined, capable of being understood and sufficiently clear in its format to be able to be interpreted by the courts. I say that as a lawyer, not as a minister—once a lawyer, you cannot really stop being a lawyer, I am afraid. That is why we do not have a whole plethora of other issues in the bill. It does not mean that they are not taken seriously; of course they are, but I wanted to stress that.

Jo O'Hara can correct me if I am wrong, but my understanding is that adherence to the forestry standards means that we have possibly the highest regulatory standards in the world. The duties to have regard to biodiversity, to habitats and to the environment—in particular, by not planting on deep peatlands—are a necessary concomitant of our commitment to adhere to the FS. Those things are well understood in the whole vocation and practice of the forestry profession in Scotland.

**The Convener:** Would Claudia Beamish like to hear from Jo O'Hara?

**Claudia Beamish:** That would be helpful, and she may well answer the point that I wanted to follow with.

**Jo O'Hara:** I would back up exactly what Mr Ewing said. Throughout my time in the profession, we have been on a journey to develop our understanding of what sustainable forest management is. As I mentioned earlier, developing the UK FS has been a process that will continue as our understanding of the social, environmental and economic aspects of forestry develops. It is the floor on which other things happen. However, using forestry to deliver biodiversity, climate change and social objectives goes beyond sustainable forest management; that is the role of the forest strategy. It is important to retain those two different concepts in your head. The third aspect is bringing that into law, which brings me back to the organisational arrangements. Bringing us within the Scottish Government means that we have to deliver the Government's agenda on all those aspects—we do anyway, but it makes it much clearer—without the Department for Environment, Food and Rural Affairs or a cross-border body getting in the way. All those things come together to achieve the outcome that you are talking about.

**Claudia Beamish:** I have a brief supplementary. Section 4 of the bill, on the preparation of a forest strategy, refers to the

Climate Change (Scotland) Act 2009, under which there are statutory duties, and to

“the land rights and responsibilities statement”.

In view of the importance of biodiversity, our statutory obligations in that regard and the complexities of deer management, for instance, would it not be appropriate to refer to those in an overarching sense there?

10:45

**Fergus Ewing:** I think that Carole Barker-Munro can give the copperplate answer.

**The Convener:** And a brief one, I hope.

**Carole Barker-Munro (Scottish Government):** No pressure there. As the cabinet secretary said, where there is an existing statutory duty, such duties are not duplicated in the bill, so the climate change targets are not in the bill; nor is the biodiversity duty.

Section 4 of the bill relates to strategies that are required by law but do not impose duties on Scottish ministers with regard to how to act—those are swept up in section 4. Claudia Beamish mentioned a long list of other policies and there will no doubt be an increasing list in future. The intention is to deal with those under section 3(3), which covers the economic, environmental and social aspects of forestry.

**The Convener:** I have a brief question on this theme. There has been some concern that the wording of section 14 of the bill is vague. Will you clarify the intention of that section and whether you believe that the wording should be tightened up?

**Fergus Ewing:** I think that Carole can probably give a more succinct answer.

**Carole Barker-Munro:** The purpose of section 14 is to provide a power for ministers to enter into arrangements with other parties to manage land on their behalf. The arrangements are by consent so there is no compulsion. The power is not new. Forest Enterprise Scotland already manages land on behalf of a number of other people. The current power is in section 3 of the Forestry Act 1967. The language in the bill has been modernised and updated but it reflects a current policy outcome and our policy is that it should continue in the future.

**The Convener:** Just to clarify—we are talking about voluntary arrangements between two parties with no compulsion?

**Carole Barker-Munro:** The arrangements are by mutual consent.

**The Convener:** The next theme will be started off by the deputy convener, Gail Ross.

**Gail Ross:** I would like to touch on sections 15, 16 and 17, which deal with the acquisition of land by agreement, the compulsory purchase of land and the power to dispose of land. The bill gives Scottish ministers for the first time compulsory purchase powers to further the achievement of sustainable development. Compulsory purchase powers are in the 1967 act but they have not been used since the act was introduced. Why do we need those powers?

**Fergus Ewing:** As I understand it, such powers are commonly provided for public bodies that are required to carry out functions in relation to the transaction of land and property. Of course, one of the main functions of Forest Enterprise Scotland is to do precisely that.

My understanding is, as Gail Ross has said, that those compulsory purchase powers have not been used for 50 years, but they are there as a backstop. It would be helpful if Simon Hodge could give some examples of circumstances in which it might conceivably be appropriate to exercise the compulsory purchase order powers, even though there has not been a requirement to use them for half a century.

**Simon Hodge:** As the cabinet secretary indicated, we have not utilised such powers but, in relation to sustainable forest management and timber transport, for example, one could imagine a situation in which timber is landlocked through a ransom strip. There are no examples in relation to wider sustainable development, because CPO powers have not been used, but if Scottish ministers wished their land management body to get engaged in activities in relation to conservation or protection of vulnerable habitats, for example, one could conceive of situations in which we could be asked to step in and use a CPO power. However, as I say, I have no examples because I have no experience of a CPO being utilised.

**Gail Ross:** I take your point that because the powers have not been used, you have no examples. However, the very fact that the powers are in the bill has been contentious both among people we have taken evidence from—organisations are completely split on the issue—and committee members, who have various views on compulsory purchase. Because it is unclear how the powers might be used, the committee does not have the confidence to say whether they are needed. I take the point that there are no examples from the past, but if such a contentious issue is to be in the bill, we really need concrete examples, so that the committee can move on.

**Fergus Ewing:** Let me answer that in two ways: one general and one specific. First, CPO powers exist as a backstop power, which is to be used not in the first instance but as a last resort. An obvious example is the construction of new roads or other

transport infrastructure for which purpose it is sometimes necessary compulsorily to purchase land. That is always a last resort, but such a power is routinely possessed by public authorities, from local authorities to central Government. It is not new; it is commonly encountered.

The fact that CPO powers have not been used for 50 years in the context of forestry is testament to successful negotiation, but of course negotiation has been conducted on the basis that there is a backstop power that could be used, in extremis. The existence of such powers informs and helps to encourage the reaching of a negotiated conclusion.

In the absence of such powers, there would be no means to lever negotiations to a successful conclusion in the case of the ransom strip that Simon Hodge described. That is a specific example—and it is not a theoretical but a very practical example. If we have thousands of hectares of landlocked, trapped timber, which is inaccessible by road or other means, and a ransom strip is preventing vehicular access for the equipment that is necessary to extract felled trees, it might be necessary to compulsorily purchase land. It has not been necessary to do that over the past 50 years, but in future it could be necessary to use CPO powers to purchase a ransom strip that is holding up sustainable development and essential access to timber as a resource for communities and businesses.

CPO powers are fairly routine, but I appreciate that there are concerns. I am aware that Scottish Land & Estates, with which we have good relations, has raised the issue, as others have done. We will see what the committee says in its report, and I certainly undertake to study the issue carefully, to see whether, at stage 2, the use of the power should be more tightly defined and constrained, perhaps by reference to the implementation of the forestry strategy and the other duties on ministers. If there are other technical means of ensuring that the power is used only for purposes that most reasonable people would perceive as not just necessary but essential, I will be happy to consider them.

However, I am clear that such provision is common and routinely encountered across the public sector and is no stranger to anyone who is involved in the scrutiny of legislation.

**The Convener:** Cabinet secretary, members are queueing up to speak on this subject.

**Gail Ross:** Cabinet secretary, thank you for your explanation. A worry that has been expressed to us is that there will be not just a continuation but an extension of compulsory purchase powers in relation to sustainable development. Will you commit to look at that, too,

with a view to explaining more about how the proposed approach will work?

**Fergus Ewing:** We will look carefully at any recommendation that the committee comes up with, because we want to work consensually. That is the right thing to do.

The phrase “sustainable development” is very familiar to legislators and lawyers. There have been discussions in the context of previous bills—some of which I have been involved with—about whether to apply a definition of the phrase. However, as far as I am aware, that is not the approach that parliamentary draftsmen have adopted, not least because the term is very well accepted by and familiar to the judiciary. The legal fraternity will correct me if I am wrong when I say that Lord Gill himself said that the term is well understood and familiar to the judiciary and those who interpret the law. There can be no higher endorsement than that, if I may say so.

**The Convener:** I invite Peter Chapman and Mike Rumbles to ask just one specific question each, because I am mindful of the time.

**Peter Chapman:** I want to reflect the anxiety that exists among various groups from whom we have taken evidence. The problem is that the power is being widened to cover sustainable development and, possibly, the compulsory purchase of land that is then given to community groups to manage. There are real concerns out there, which I share. The Government wants to take a consensual approach and achieve cross-party support for the bill, but this bit of the bill is the most difficult bit for me and the other Conservative members of the committee—we have real problems with it. At the moment, the power is too broad, so I welcome the promise to look at it. We have to make it a lot more focused and rein it in because there are real concerns about it.

**The Convener:** Was there a question in there, Mr Chapman?

**Peter Chapman:** The question is: how can we make this bit of the bill acceptable to the land managers out there who have said that it is a real problem for them?

**Fergus Ewing:** We will listen carefully. I undertake to study those issues carefully.

**The Convener:** Mike, do you have a question?

**Mike Rumbles:** Yes. On compulsory purchase powers, Charles Dundas from the Woodland Trust said:

“In principle, the fact that the powers have not been exercised in several generations suggests that there is no cause to have them. If I were the cabinet secretary, I would consider this a great public relations opportunity to say, ‘Look at me. I’m turning down powers that I could have.’

However, I am not the cabinet secretary.”—[*Official Report, Rural Economy and Connectivity Committee*, 6 September 2017; c 44.]

Cabinet secretary, will you do something that I have never known any minister of any Government since 1999 to do and willingly give up these unnecessary powers?

**The Convener:** Cabinet secretary, you can say “Yes” or “No” or “I’m going to think about it.”

**Fergus Ewing:** No.

**Mike Rumbles:** I had to try.

**Fergus Ewing:** My objective is not to secure the best public relations but to get the right legislation. The fact that the powers have not been used does not mean that one can conclude that they have had no influence. As someone who was involved in negotiations in conveyancing and property transactions for 20 years, I can say that if those powers did not exist as a backstop, it is quite possible that the successful outcome of the negotiations secured by Simon Hodge and his team would not have occurred. I respect Mr Dundas’s views and those of the Woodland Trust, with which we work closely, but I respectfully disagree with his proposition.

**The Convener:** We will move on to the next section, on which Rhoda Grant will lead.

**Rhoda Grant:** A number of people have flagged up concerns about the definition of community body in the bill and its definition in the Community Empowerment (Scotland) Act 2015. Is there a reason for the difference between the two definitions?

**Fergus Ewing:** Definitions are one of Carole Barker-Munro’s many areas of expertise.

**Carole Barker-Munro:** Again—no pressure.

There are four different definitions of community body in the Community Empowerment (Scotland) Act 2015. The definition of community body in the Forestry Act 1967 is the definition that is carried forward into the bill. The definitions are different because they serve different purposes. However, we acknowledge that a number of people raised concerns around the provisions and we are listening to those concerns.

**Rhoda Grant:** I will move on to some of those concerns around sections 18 to 20. We heard evidence that they might not be required because the bill is different and section 17 gives ministers powers to dispose of land for sale, gift or lease, which, it was assumed, would cover community bodies. Is there a reason for having three sections that are entirely on community bodies? Does that give them a different status, given the powers that are mentioned in section 17?



11:00

**Carole Barker-Munro:** The bill almost provides another avenue for communities to access publicly owned land. Our starting point was the Forestry Act 1967, which had provisions to allow the Forestry Commission to overcome a specific legal hurdle.

We are listening to concerns about the fact that part 5 of the Community Empowerment (Scotland) Act 2015 is now in force for asset transfers and there could be an element of overlap. We are exploring that.

**John Finnie:** On part 5, the Community Woodlands Association made the suggestion that the present wording could give rise to the prospect that a group that would be eligible to buy could not lease, and vice versa. Do you undertake to pick that up in the review?

**Carole Barker-Munro:** I am sorry; I did not quite follow your question. Are you talking about part 5 of the Community Empowerment (Scotland) Act 2015?

**John Finnie:** Yes.

**Carole Barker-Munro:** I am afraid that that is outwith my knowledge. If you have a specific question about the 2015 act, I can follow it up, but the operation of the 2015 act and asset transfer is outside the scope of the bill.

**John Finnie:** I will write to you on that specific issue.

I have a question for the cabinet secretary. Do you think that the bill affords the opportunity to create a wider pattern of ownership and operation of forestry in Scotland?

**Fergus Ewing:** There are opportunities irrespective of the bill. For some time, there has been a move towards supporting community ownership and there are established policies that John Finnie will be aware of as they have been invoked frequently in the Highlands, which we both represent. The direction of travel, which we support, is to seek to ascertain how communities can be involved and the part that community ownership can play. The bill does not preclude or seek to constrain those opportunities in any way.

If there are opportunities for more community ownership, that would be a very good thing, although the questions of structure, finance, rights and responsibilities are inherently complex. In relation to community energy policy and renewable energy, we have seen many community ownership projects, which have been well supported by this Parliament, and I see no reason why there could not be similar opportunities in forestry.

**The Convener:** We move on to the issue of felling and control of felling. Most people accept that the legislation has worked extremely well in the past and that felling is done in accordance with the law. The bill does not quite reflect previous felling legislation. Is there a reason for that? Stakeholders have asked that question.

**Fergus Ewing:** I have been involved in discussions about that. It is partly a question of definition. It has been drawn to my attention that the definition of felling is “intentionally killing a tree”, which seems to me to be the first parliamentary definition with a macabre element to the draftsmanship. However, the definition is not correct, because certain types of tree are not killed if they are felled. An amendment is plainly required to put that definition out of its misery, as it were.

I am aware that there is a question of definition—we are well seized of that. I do not know which of my array of officials would like to answer the wider question—perhaps Catherine Murdoch would.

**Catherine Murdoch (Scottish Government):** When people look at the bill versus the previous legislation, they see a lack of detail on some fronts, which is perhaps what the convener’s question is getting at.

**The Convener:** Requirements relating to felling are subsidiary to the bill whereas they were actually in the primary legislation previously.

**Catherine Murdoch:** The exemptions that set the parameters of the current regime are partly in the Forestry Act 1967 and partly in regulations—they can be amended by regulation, too.

In the bill, we propose a mechanism by which we will review all the exemptions with stakeholders. Now that the bill has been introduced and they can understand the framework, we are speaking to them about whether the exemptions need to be reviewed. It is worth highlighting that not all of the current exemptions are in the 1967 act; some have been amended by amendments to the act and some have been added by regulations. At the moment, the picture is muddled for practitioners; I hope that having everything in regulations will make things clearer.

**The Convener:** We have been given a specific example. Power companies that want to ensure supply and keep the ground next to their power lines clear of trees have an exemption. They may well fell more than 5 cubic metres of timber in the process, and they have specifically raised with the committee the question whether they will need a felling licence to do that. If they do, it will clog up the system.

**Catherine Murdoch:** The intention is that we will recreate exemptions that work, such as that one, or that we will tweak exemptions to make them work better in the future. There is no suggestion that we will drop such exemptions.

**The Convener:** Some people have said that felling timber for firewood is a good idea; one person has said that it is not. Would that be an exemption that you would carry forward? The purpose of my question is to give people who manage forestry some confidence that the regulations will not take a huge amount of time to implement and that there will not be an interregnum when the bill is passed, which would stop people getting on with proper management and silviculture operations.

**Catherine Murdoch:** I hope that our work is allaying some of those fears. We are in contact with people who have given evidence to the committee and with others who we know have an interest to ensure that they are involved in the review of what is in place at the moment, which is the starting point for those conversations.

Quite a lot of the exemptions will not have a great impact on the forestry sector, such as the one that allows people to fell in orchards. We are alert to the fact that it is not just the sector that we should speak to; we need to speak to everyone who is affected by what might be considered peripheral exemptions.

**Carole Barker-Munro:** I would like to follow that up with a point about the general commencement of the legislation. Towards the end of the bill, there is a power to commence various sections at different times. The intention is for there to be no gap between the operation of the existing regime under the 1967 act and the operation of the new one.

**The Convener:** The bill says that timber can be directed to be felled for good economic and sustainable forest management reasons—I regret that I cannot point you directly to the relevant section in the bill. Does that mean that the cabinet secretary could demand that a forest owner fells timber at a particular time for economic reasons, or would that be done only for health reasons?

**Catherine Murdoch:** There is a carry-forward from the 1967 act. Felling directions are currently available for the purposes of timber management, and we have slightly extended that approach in the bill to allow the direction to cover any aspect of sustainable forest management

**The Convener:** I want to be clear about that. With regard to timber management, the committee has heard evidence that there will be a period—in 2035—when timber will be in short supply. Will the cabinet secretary be able to use that power for economic reasons and to instruct people to fell

their forests to smooth out the shortfall in supply? Is that the policy intention?

**Fergus Ewing:** I do not think that that is the intention of that provision. It is merely a carry-forward that has been extended to update the approach. I entirely agree with those who have pointed out that a dip in the anticipated annual tonnage of production is expected circa 2035. That is an important economic factor because I am told that it influences potential investment decisions and the willingness of funders to invest.

I think that we all agree that forestry is a long-term business. We have targets because we recognise that we need a balance and a mix of different species of trees, with each tree in the right place. However, beyond those environmental and silvicultural dictates, we also require to meet the needs of the economy, and that means having productive species. Those who make that argument make it well, but the particular provision in the bill that we are discussing is, as far as I am aware, not intended to achieve the conferral of powers on me for that purpose.

Barry McCaffrey is straining at the leash to get in.

**Barry McCaffrey (Scottish Government):** I simply want to clarify matters for the convener. Section 31 sets out clearly that

“Subsection (2) applies if ... felling of trees is required ... to prevent deterioration or further deterioration in the quality of timber ... to improve the growth of other trees, or ... to prevent or reduce harm caused by the presence of the trees.”

The parameters are therefore clearly set out in that section.

**The Convener:** So we are confident that the bill will not force people to fell trees for economic reasons.

We will now move on to the next area.

**Stewart Stevenson:** Chapter 6 is about notices to comply and so on. I propose to deal with the matter in two parts. One question is: if there is a register, who should do the registering? I think that that issue has been raised in evidence. First, however, is there a need for a register? It appears that the drafting of the bill was directed at ensuring that continuing conditions, which primarily relate to replanting after felling, are seen and acted on in the public domain. Is that the policy intention behind having that in the bill? Is the current system working or not working?

**Fergus Ewing:** The bill will enable but will not require the registration of notices. Registration in the land register will ensure that conditions and directions are legally enforceable if ownership changes, so they are binding on singular successors. The risk is that, if they are not so

registered, they will not be binding on singular successors, so the conditions that we wish to have observed and implemented may not be observed and implemented by a singular successor. That is the rationale, as I understand it. Jo O'Hara can speak to the practical aspects of that better than I can.

**Jo O'Hara:** This is about ensuring that, if somebody felled and did not restock and we issued restocking notices, we would be able to enforce those notices. The bill will enable; there is no requirement, as the cabinet secretary said. It is important that we have that power in place to ensure that the site gets restocked if there is a change of ownership. That is basically what sustainable forest management is about.

**Stewart Stevenson:** I presume that you are referring to section 35(2), which says:

"The Scottish Ministers may apply to register a notice".

The context in which that would happen that we are being pointed to is a change of ownership of the land—hence the transfer of the obligation. How would it be known that that sale of land had taken place?

**Fergus Ewing:** I think that Catherine Murdoch will answer that.

**The Convener:** Everyone is looking at one another. I am not sure whether they have sloping shoulders. The question seems to have landed with Catherine Murdoch.

**Catherine Murdoch:** I am working with Jo O'Hara's teams to look at how that would work in practice. The intention is that there would be a risk-based approach so that, in areas in which change of ownership is highly unlikely, we might not register from the outset—we might wait to see whether ownership changes—and in areas in which it is thought that ownership will change, we could register straight away. We are looking at how all of that would work in practice to ensure that there is a proportionate use of the enabling power.

**Stewart Stevenson:** On that basis, when might you be able to come up with an idea of how many registrations there might be in a typical year? From what you have said, I suspect that you cannot give the committee an idea of that right now.

**Catherine Murdoch:** I cannot do so right now, but I am working with Jo O'Hara's teams. On when we might have an answer, we need to wait until we see what shape the bill is in after stage 2.

11:15

**Stewart Stevenson:** Right. I take it that, whether or not ministers have applied to register a

notice, that will have no effect on the legal obligations that derive from the notice, which will pass to the new owner.

**Catherine Murdoch:** The new owner is not bound unless something is registered.

**Stewart Stevenson:** Ah! So if there is no registration of the notice, nothing passes to the new owner.

**Catherine Murdoch:** Yes—nothing passes.

**Stewart Stevenson:** That is an important point that I had not understood.

I will move on, because we could spend a lot of time on that and I do not think that we need to—yet. An issue came up in evidence about who should maintain the register. Sections 39 and 40 say that it will be Registers of Scotland. However, it was suggested in evidence that the Forestry Commission has an effective online list of such notices. Leaving aside the issue of the notices themselves, is the minister minded to consider where the register might be published and how it might be administered? There was an argument, which was not much rebutted when we heard it, that we have something that works, so why bother to change it.

**Fergus Ewing:** It works in practice. We will come back to the committee on that issue, because those who purchase a forest generally do so because they want to own a forest and therefore they are required to abide by silvicultural good practice and the FC standards, and they accept that and do it. That is just the way it is. Why would somebody buy a forest unless they wanted to carry out that work? For that reason, the problem is theoretical rather than practical. However, it is important that we come back to you on that issue, because that might inform the committee's approach.

In response to the question, we agree that notices to comply with continuing conditions could be included on an FCS web-based register rather than registered with Registers of Scotland. That is an alternative, and it would provide transparency, but it would not allow for enforcement of the conditions after a change of ownership. If the new owner was not bound in contract to obtemper those conditions, in the absence of title conditions, the new owner would not be under any direct contractual nexus, if you see what I mean. In practice, those conditions would almost certainly be dealt with in the conveyancing between solicitors that is involved in the purchase and sale of forestry, which is not for the non-specialist. However, we are considering the issue. I guess that the risk is that a new owner could claim ignorance of the conditions if they did not appear in the normal solicitors' searches or in the land

obligations section of the land certificate or the burdens section in the sasine register.

**The Convener:** If somebody buys a forest and it is not registered and the conditions are not transferred, do the conditions then stay with the person who has sold the forest? That would be my understanding. If that is the case, I suggest that any solicitor who was involved might be not only running for the hills but running for the trees as well.

**Fergus Ewing:** Exactly. That is why I said that I believe this to be a recognisable and clearly understandable scenario that could arise but, in practice, certainly with commercial forestry, is most unlikely to arise, because the seller's solicitors would ensure that their client was protected by the transmission to the purchaser of any obligations incumbent on the seller.

I think that Catherine Murdoch has a comment.

**The Convener:** I want to bring Stewart Stevenson back in first.

**Stewart Stevenson:** Catherine Murdoch might be able to cover this point as well, which is just a small one that has emerged from what I have heard. Is the power that the bill provides for the minister to apply to register a notice an enduring power? In other words, could that be done at any point after the sale for the next 50 years or whatever, or is it time limited? I do not see how it is time limited.

**Catherine Murdoch:** The conditions will be time limited—

**Stewart Stevenson:** Sorry, but, to be clear, I am not talking about the conditions being time limited; I am talking about the point at which the minister may register a notice.

**Catherine Murdoch:** That is not time limited, but the conditions that are given when Jo O'Hara's staff give permission to sell will not last for ever. Those conditions are generally about restocking and they are time limited. The minister would not register a notice after the time when the conditions have lapsed.

**Stewart Stevenson:** They would not, but the minister or his officials can apply to register a notice at any point during which the notice remains current, notwithstanding how many changes of ownership there may have been in the period since the notice was issued.

**Fergus Ewing:** This is becoming more of a legal examination than anything else. We will have to come back to you on those points, unless Barry McCaffrey has anything to add.

**Barry McCaffrey:** I think that the policy intention is that, when someone sees conditions running on into the future and there would be an

intervening change of ownership, an effective way of ensuring that the future owner is bound by the conditions is making sure that the notice is registered at a point before the ownership is transferred.

**The Convener:** We will move on. It is fair to note that the evidence that we have taken on the current Forestry Commission map-based system—which the cabinet secretary will have picked up on—indicates that it is generally perceived as quite a good system.

On that note, I ask John Mason to ask questions on the final theme.

**John Mason:** Perhaps not surprisingly, I want to look at finance. I have three broad questions.

Section 64 says:

"The Scottish Ministers may, for the purposes of or in connection with the carrying out of their functions ... impose charges of such amounts as they consider appropriate."

We have had some evidence that witnesses are nervous that that gives ministers a blank sheet. Will you clarify how you would use that power and say that there will be not be excessive costs for owners?

**Fergus Ewing:** I will. There is no intention to change current Government funding arrangements for forestry. The power is designed to underpin the current arrangements, whereby Forest Enterprise Scotland is able to trade goods on the open market, which it did to the tune of £85.4 million in 2016-17. As I understand it, the power is intended to enable flexibility for Forest Enterprise Scotland. Mr Hodge could expand on that, if that is necessary.

**Simon Hodge:** As a public corporation, we secure 80 per cent of our revenue stream from trading. I would defer to legal opinion on terminology, but that is critical to our sustainable financial management of the estate. I do not see it as charging as such; it enables us to participate in trading goods and services, as the cabinet secretary said.

**John Mason:** My second question is on the financial memorandum, which has costs for three or four years for the changeover period. Some of that relates to IT and some relates to branding and website development, to the tune of £4.25 million over three years. Witnesses had some concerns that that £4.25 million would come out of the normal forestry budget and would therefore mean fewer trees or less of something on the ground, because money would presumably be going into painting vehicles, giving people new uniforms and that kind of thing. Some witnesses requested that that money should be extra funding from the Government, so that the practical work would not be restricted. How would you respond to them?

**Fergus Ewing:** We have looked carefully at those issues, which are important and on which further detailed work is being done. Let me take you through the components. The first is the estimated IT spend. Members know that IT is a topic that I take a close interest in. Existing Forestry Commission IT is no longer fit for purpose; it needs upgrading anyway. That may not come as a huge surprise to committee members, who I know share my interest in matters IT.

The IT system is no longer fit for purpose and needs upgrading because of the age of the infrastructure and the lack of investment in recent years. The Forestry Commission is already taking action to ensure business continuity and protection against system failure and is moving connectivity from the Forestry Commission network to the Scottish wide area network—SWAN. The Great Britain layer of the Forestry Commission that has provided central services such as IT is in the process of being dismantled as part of the internal changes to the Forestry Commission.

What I am saying is that, even if the Forestry and Land Management (Scotland) Bill did not exist, there would need to be considerable spend on IT. How much additional spend is necessary is a legitimate question and we would be happy to provide further information as we go forward.

There will be some costs in relation to branding. Let me be clear and say that I wish for those costs to be kept to a minimum. That is a sensible approach and I have asked for that commonsense approach to be taken. That is clearly understood and that view is widely shared by everyone involved. Those costs will not impact on the delivery of other programmes because the funding comes mainly from reserves that Forest Enterprise Scotland is able to maintain because of its prudent management and as a result of having public corporation status for accounting purposes.

As you will note from the financial memorandum, the range of costs is quite wide. Therefore, there is further work to be done. Those figures are indicative and are not hard estimates—as an accountant, Mr Mason will know that there is a difference. I want to reassure members that it is something in which I take a personal and close interest, as officials are well aware. I will continue to do so to ensure that the costs are minimised. We will be retaining the green livery and badge for the staff, who I think would prefer to maintain that approach.

**John Mason:** When Strathclyde Passenger Transport stopped having the trains painted in its own colours, it was agreed that, rather than simply repainting all the trains immediately, the new livery would be brought in only when the trains were due for repainting. Could that be a model, so that you would not have to repaint all the vehicles but could

bring them out in the new colours when they needed to be replaced?

**Fergus Ewing:** In principle, that is the kind of approach that we will take.

**Simon Hodge:** That is exactly the sort of approach that we will look to take, particularly if the direction of travel is to evolve the brand, rather than to effect a dramatic change.

As the national forest estate is spread across many places over Scotland, we have around 7,000 items that carry the Forestry Commission name and brand. Vehicles are part of that and anyone who has visited one of our forests for recreation purposes will have seen the various signs and so on. That is why the potential scale of the activity is great. However, there are good opportunities to take an approach that uses the normal replacement cycles for various items. We also need to be mindful of the need to maintain clarity for stakeholders and visitors and ensure that there is no question but that visitors feel welcome and able to engage with us as an organisation.

**John Mason:** We are pressed for time, so my final point is that witnesses have raised concerns that there might be less information in the budget about forestry because of the reorganisation. I seek some reassurance—perhaps we can get it in writing if there is no immediate answer—that there will not be any less information available to the committee or the public as a result of the change of process.

**Fergus Ewing:** I give that assurance. The bill has no impact on funding for forestry in Scotland. Funding will continue to be provided via the Scottish budget and approved and scrutinised by the Scottish Parliament and the Rural Economy and Connectivity Committee. If I have learned anything, it is that that will mean that more information will be provided, rather than less.

**John Mason:** Thank you very much.

**The Convener:** That concludes our questions in our final evidence session on the Forestry and Land Management (Scotland) Bill. Some interesting issues have been raised and given that your response will help us to determine how we deal with our report and our approach when the bill comes to the committee at stage 2, we would appreciate getting that information soon.

Thank you for all the evidence that you have given us this morning.

11:29

*Meeting suspended.*

11:36

*On resuming—*

## Small Landholdings Legislation (Review)

**The Convener:** Item 4 is consideration of the recent review of the legislation governing smallholdings in Scotland. Part 11 of the Land Reform (Scotland) Act 2016 required the Scottish Government to review the legislation governing small landholdings and to lay a report on that review before the Scottish Parliament. The report was published in March.

The cabinet secretary remains with us. He is joined by Jen Willoughby, who is the team leader for agricultural holdings at the Scottish Government, and Claudine Duff, who is the policy manager for smallholdings. I invite the cabinet secretary to make some opening remarks before we move to questions.

**Fergus Ewing:** Statutory smallholdings—around 74 of which remain in Scotland outwith the crofting counties—are tenanted holdings that are regulated by the Small Landholders (Scotland) Acts 1886 to 1931. They are part of Scotland's agricultural heritage and form part of the fabric of land tenure in Scotland.

The Land Reform (Scotland) Act 2016 required us to conduct a review of the legislation governing small landholdings. The report on that review, which was laid before the Parliament on 30 March, made a number of policy recommendations, and they are what we are here to discuss.

A written consultation was sent to all 74 small landholders across Scotland and to their landlords, and a total of 22 responses, including five from landlords, were received. In other words, responses were received from 23 per cent of all small landholders. Officials followed up the written consultation with phone calls to small landholders and landlords, and a number of well-attended Government-led workshops and meetings with landlords were held. Officials also attended industry events.

The legal review focused on the issues that were highlighted through the consultation, such as the accessibility of the legislation and how it has impacted on the understanding of the rights of small landholders and landlords; how security of tenure is key to all small landholders; and issues to do with access to funding and banking. The issues that emerged centred on the clarity of the legislation, a possible right to buy and the idea of having a single representative body. I am sure that all members have read the recommendations and that we will have a good discussion about them.

Small farms play an important role in providing access to agriculture for new entrants, and they are essential for the sustainability of the industry and for those people who farm on a part-time basis or on a smaller scale. However, statutory small landholdings are in a unique position, and the review is the first step towards understanding how they contribute to land tenure, to the tenanted sector and to our vibrant rural economy. I would welcome members' feedback, which I and my officials will consider as the policy work develops.

**The Convener:** Thank you, cabinet secretary. John Mason will ask the first question.

**John Mason:** As a city person—in other words, an outsider—I can play devil's advocate. Given that there used to be 50,000 small landholdings and there are now 74, can we truly say that they are still part of the fabric of Scottish land? Are they dying out or could we try to expand their number?

**Fergus Ewing:** They are pretty important to the 74 people concerned. It is obvious to say that each individual is important, and I am sure that Mr Mason agrees with that proposition. Nevertheless, Mr Mason makes a fair point. The number of small landholders has reduced substantially over the years. One reason for that withering on the vine might be that there has not been much opportunity to have discussions of the kind that we are having today to consider the issues that are of interest and concern to small landholders.

Because of the relatively small number of people who still possess this unique form of landholding, there is a question mark over it. The time that the committee is taking, at members' instigation, to understand the issues involved is a worthwhile starting point in determining whether we can answer Mr Mason's question positively.

**John Mason:** You feel that there is at least a possibility that the sector could expand in the future.

**Fergus Ewing:** Of course there is.

**John Finnie:** My colleague Alison Johnstone had a keen interest in the issue of small landholdings in the previous session. One of the challenges has been in understanding the legislation.

In the report, the Scottish Government undertook to do a number of things. One of them was to commission an independent legal expert to write a guide to the legislation. Can you outline the timetable for commissioning and publishing that guide?

**Fergus Ewing:** Yes. The provision of a guide to the current small landholding legislation could help small landholders to gain a better understanding of the legal framework. The fact that there is no such guide at the moment is highly unusual. There are

recognised legal texts in every area of law, some of which have gained authoritative status. Such works are an aid to understanding legal rights and responsibilities in all areas of Scots private law.

We are working with Sir Crispin Agnew, who is an expert in the field, and we fully expect that the guide will be available by the end of the year.

**John Finnie:** Thank you very much—I look forward to that coming out.

Another thing that the Government undertook to do was to set up a web page to provide advice and support to smallholders. When will that web page be made available to the public and what information will be provided on it?

**Fergus Ewing:** Jen Willoughby will answer that.

**Jen Willoughby (Scottish Government):** The web page is already up and running on the Scottish Government's website. It provides a variety of information that we think will be helpful to small landholders on the issues that they raised during the review. For example, there is information about how to access different sorts of funding and how to engage with colleagues in the rural payments and inspections division. The web page also provides links to other bodies that small landholders might find helpful as well as links to all our other web pages.

**John Finnie:** Thank you—that is very helpful.

**Richard Lyle:** My question is along the lines of John Mason's. Back in 1880, there were 50,000 smallholdings; now, there are 74 of them covering 0.2 per cent of tenanted land or 0.05 per cent of agricultural land. Small landholders do not have a pre-emptive right to buy, as farmers with secure 1991 tenancies do, or an absolute right to buy, as crofters do. Why is that, given that the agricultural holdings legislation review group and the land reform review group recommended that small landholders should have a right to buy? Why have you chosen not to provide them with such a right? After all, there are only 74 small landholders. We would resolve the situation by allowing them to buy.

**Fergus Ewing:** Mr Lyle mentions the fact that the number of small landholders has reduced, and it is fair to say that the use of this form of tenure has fallen into desuetude and disuse and has been replaced by the use of other statutory forms of tenancy, such as those under the Agricultural Holdings (Scotland) Act 2003 or private contractual arrangements that have been devised by parties entering into contracts on a private basis. It is fair to say that, in respect of new instances of this form of land tenure, it has fallen into disuse.

11:45

One issue that has been raised is the right to buy. Because we are in the early stages of the debate following the review, the first step is to explore the exact nature of the current legal tenure and its peculiarities relating to ownership. I think that it is unique in the respect that, as I understand it, the house but not the land is owned. Therefore, the first step would be to see the guide that Sir Crispin Agnew will provide in relatively short order. Looking at that as a statement of the law would be a good starting point in considering any move on from the current situation.

A right to buy would be a significant undertaking, and a number of issues would have to be considered. There are significant legal and European convention on human rights issues—members will be aware of the provisions in the case of *Salvesen v Riddell*, for example. I am not expressing a legal opinion but merely making the point that those are sensitive and difficult legal areas, and the Scottish Government has no plans to legislate in them at the moment.

On the other hand, we are willing and keen to commence the debate, which we are doing, and it will be informed by Sir Crispin's welcome contribution to it.

**Richard Lyle:** Has any of the 74 small landholders made a request to buy? Have we spoken to or otherwise been in contact with them?

**Fergus Ewing:** They are free to make private arrangements, and it is up to each individual to do so. I would be astonished if private contractual arrangements have not been made over the years by individuals with their landlords after coming to a negotiated conclusion. That is always the best way to move on and to reach an alternative arrangement.

Small landholders are free to make private arrangements, but some of them have identified the right to buy as being of interest. As I think I pointed out, we have had formal responses from only just under a quarter of the small landholders who are involved—which is a quarter of 74.

**Richard Lyle:** That is 18 or 19.

**Peter Chapman:** The last primary legislation on small landholdings was passed back in 1931, so there is no modern small landholdings legislation. Given that situation, why have you chosen not to ask the Scottish Law Commission to review the law on small landholdings and to recommend reforms? Also, do you agree that the current legal situation of small landowners is unfair?

**Fergus Ewing:** As I said, the first step is to provide some clarity on what the law actually is. Sir Crispin Agnew has agreed to do that and he is working with us on it. I imagine that the second

step will be for the committee to consider that in the light of the small landowners' responses.

We have not considered whether we will ask the Scottish Law Commission to do any work on the matter, but that option is open to us and it might well be appropriate. I am certainly not ruling it out, but we need to go in stages and not ignore the fruits of the work that we are doing at the moment in direct response to the review. I hope that the committee will welcome that work.

As to whether the law is fair or unfair, that is a matter of subjective judgment. Because, as the minister, I have a duty to consider things in the round, it would be premature for me to opine on the general concept of its fairness until the completion of the work that we have agreed to do, which will be fairly soon.

Today is perhaps the first time in half a century or more that the matter has been considered at all, so the fact that we are having the debate is a good thing. To any small landholders who are listening to this or reading the debate, I say that we are interested in your position, we value the role of small farmers in Scotland and we are debating the matter because we want to see whether there are ways in which we can help. We also have a duty to consider things carefully when it comes to possible law reform.

**Peter Chapman:** It appears that the 74 small landholders have been left behind somewhat. The law has moved on in various areas and they seem to have been missed out, on the whole. That suggests that there is an unfairness.

**Fergus Ewing:** If the member has any proposals, I am happy to consider them.

**The Convener:** In the conclusions section of the report, the Scottish Government said that it would consider whether smallholdings should be included in the remit of either the Crofting Commission or the tenant farming commissioner. Do you agree that an umbrella body is needed? Who should that be?

**Fergus Ewing:** It is correct to say that small landholdings do not fall within the remit of any organisation. Given their relatively small number, it would not be sensible to go to the expense of creating an entirely new commission. That would not be practical. Therefore, the review recommends that work be undertaken by either the Crofting Commission or the tenant farming commissioner. Coverage by an umbrella body could provide the sector with an independent source of information and dispute resolution for some issues. Those bodies do not and would not replace the jurisdiction of the Scottish Land Court, but we are in discussions with the Scottish land commission and the Crofting Commission about the potential options.

The Crofting Commission has indicated that it might agree in principle to expand its remit to include statutory small landholders subject to further consideration of resource implications and discussion at board level. However, extending the Crofting Commission's remit would require legislative change. We would welcome the committee's views on the subject.

**The Convener:** If legislative change is needed, that is one thing, but do you have a view? You have suggested that the Crofting Commission might be able to take the responsibility. The committee would like to know what your own suggestion would be. Would it be the Crofting Commission? If so, would you then produce legislation and timescales? Could you give us an idea of your opinion on that?

**Fergus Ewing:** I have not formed an opinion yet because we are at the start of the debate and, generally speaking, it is prudent for ministers to wait until the debate is finished before coming to decisions. You will be aware that any view that I express here I express not as Fergus Ewing but as a Government minister.

I am not being overly cautious. This is the first time that we have debated these things and it would be wrong for me to rush to a view, particularly since we are talking about third parties. We are in discussion with the Crofting Commission and, as I have said, it is willing to take the responsibility. The Crofting Commission deals with crofters, of course, and the nearest analogy to small landholders would, I think, be crofters. There would be a fit, in principle, which I presume is why the Crofting Commission has expressed its willingness to explore the matter further. *Festina lente* should be the approach, and that is how I am minded to proceed.

**Stewart Stevenson:** I have an observation to make. Given that the Crofting Commission is an elected body in a geographical area, and given that a number of the smallholdings are outwith that area, I suggest that the Government proceed with caution because of that mismatch. Certain people would be differentiated from some of their number by being able to influence outcomes while others could not. That is all.

**Jamie Greene:** I have a keen interest in the subject, as many of the small landholdings are on the island of Arran, which is in my region. I should point out that Arran is a real island.

There are also many small landholdings in other parts of Scotland that are outside the designated crofting areas—in Ayrshire, Dumfriesshire and parts of the Borders. Given that we are considering whether we should link the strategy or legislation around small landholdings with crofting, what attention has been given to the complexities



that might arise from the fact that many of those small landholdings are not in designated crofting areas? Since we last discussed crofting strategy, has the cabinet secretary had any further thoughts about whether we should be linking legislation and strategy for these different types of holdings?

**Fergus Ewing:** Thank you for pointing out that Arran is an island.

Crofting and small landholdings have strong historical ties. We welcome all views on the relationship between the two and how it could be taken forward in the future. Mr Stevenson made a relevant observation about one of the practicalities in that the Crofting Commission is a body whose board members are elected. Small landholdings that lie outwith the crofting counties would not, by definition, have an elected voice on that body without legislative reform. If they were to be brought within the ambit of the Crofting Commission in those circumstances, it would create an anomaly that, I am sure, members of the Scottish Parliament would ask to be resolved or dealt with in one way or another.

The Crofting Commission has indicated that there is merit in bringing small landholding and crofting legislation together on the same register while retaining—as one would have to—the separate identities of both types of tenure. It might be possible for a new administrative register to be put in place, and that will be considered as part of our retrospective research project.

At the moment, for the reasons that I have set out, no final decision has been made on the inclusion of small landholdings in any crofting bill. However, the consultation on crofting that we launched recently is wide and will give consultees the opportunity to comment on the links with small landholdings. We will review the matter in the light of the consultation responses, including any that Mr Greene's constituents in Arran might wish to make.

**The Convener:** The final question is from Gail Ross.

**Gail Ross:** It is a follow-up to that point. What is your timetable for taking practical action to progress the commitments that have been made?

**Fergus Ewing:** We are taking forward the review recommendations now. I have indicated the timeline of some aspects. The web page is up and running and it is available now. The guide will be available and research is being progressed.

I would like to be able to come back to the committee sometime in the early part of next year to see what stage we have got to, particularly if that permits the guide to be published and lets us consider all aspects of the review recommendations.

I hope that that timescale is acceptable to the committee. These things do, of necessity, take time to develop but I am pleased that, for the first time in Scotland, we have made an effort to look into and show respect for and interest in a small but interesting and important part of Scottish rural life.

**The Convener:** Thank you, cabinet secretary. We have asked all our questions. I confirm that the committee takes an interest in small landholdings because we think that they are important. As you have highlighted, the fact that the issue has not been addressed for a long time means that we are keen to make sure that it does not slip under our radar. We will look to ask you to come back when the legal opinions are clearer—we will take you up on your offer.

Thank you for your time this morning, cabinet secretary.

11:58

*Meeting continued in private until 12:20.*



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