



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 24 April 2018

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
13th Meeting 2018, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Donald Cameron (Highlands and Islands) (Con)
*Finlay Carson (Galloway and West Dumfries) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
Gil Paterson (Clydebank and Milngavie) (SNP)
Alex Rowley (Mid Scotland and Fife) (Lab)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)
Sara Grainger (Scottish Government)
Roger Halliday (Scottish Government)
David Mallon (Scottish Government)
Professor Colin Moffat (Scottish Government)
Mike Palmer (Marine Scotland)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 24 April 2018

[The Convener opened the meeting at 09:43]

Decision on Taking Business in Private

The Convener (Graeme Dey): Good morning and welcome to the 13th meeting in 2018 of the Environment, Climate Change and Land Reform Committee. We have received apologies from Gil Paterson and Alex Rowley, and we have been advised that Richard Lyle is hoping to join us a little later.

I take this opportunity to bid farewell to Kate Forbes, who was a member of the committee since it was established. On behalf of all the committee members, I thank her for her contribution to our work over the past two years and wish her well in her new committee roles.

I remind everyone present to switch off mobile phones and other electronic devices as they may affect the broadcasting system.

The first item on our agenda is consideration of whether to take items 4 to 7 in private. Does the committee agree to take those items in private?

Members indicated agreement.

National Performance Framework National Outcomes

09:44

The Convener: The second item on our agenda is evidence on the Scottish Government's national performance framework national outcomes. We are joined by Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform, and by Professor Colin Moffat, Dr Linda Pooley, Sara Grainger and Roger Halliday, who will be assisting her.

Do you wish to make any opening remarks, cabinet secretary, or can we move straight to questions?

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): I apologise for being a few minutes late, convener. When I arrived at Parliament, I realised that I had forgotten my pass. I am sure that everybody has been in that position at some point.

The Convener: Indeed.

Roseanna Cunningham: I do not have any opening remarks.

The Convener: We will go straight to questions, starting with John Scott.

John Scott (Ayr) (Con): Good morning to the cabinet secretary and her team. How did the Scottish Government determine what the "communities in Scotland" are?

Roseanna Cunningham: I think that, throughout a variety of different pieces of legislation, there is an understanding of the idea of community in Scotland. There are particular definitions for some purposes. In other parts of what we do, there are rather broader ideas. Are you talking about how we consulted?

John Scott: I mean in relation to the key national indicators.

The Convener: Yes—the question is about the consultation.

Roseanna Cunningham: From a legislative perspective, some pieces of legislation have particular definitions of community, community organisation and representation, and other pieces take a slightly different approach.

In consulting on the national performance framework, we tried to establish the widest possible representation from a range of sectors and interests, including policy makers, experts, practitioners, academics and businesses. We also

included the Children's Parliament to ensure that that aspect of Scotland was involved.

Over 200 external organisations were invited to take part in the consultation, so there was a very wide range of groups. For obvious reasons, a significant number of those were organisations with a rural and/or environmental remit. In addition, the national performance framework round table included the Convention of Scottish Local Authorities and the Scottish Trades Union Congress.

We consulted as wide a range of communities as possible, consonant with being able to deliver something practical.

John Scott: How were the groups that represented interests identified? Were there key criteria for identifying stakeholders?

Roseanna Cunningham: Some of them were almost self-identified. There are a wide range of sectoral interests, third-sector interests, policy groups and so on that are almost self-identifying—we could hardly not have included them. As I said, about 220 external organisations were invited to take part in the consultation. I suspect that the identification process tried to include as many groups as possible that would be able to contribute sensibly, quickly and effectively.

I am looking at my officials, but I do not think that there was a definitive list at the outset that we did not depart from. We consulted a wide range of individuals and groups, but it was understood that, if it became clear that other groups might be required, we would look to them, too. We were working not from a set list but from a living list that changed as we went along.

Roger Halliday might want to say something specific about that.

Roger Halliday (Scottish Government): I guess the starting point was Scottish Government colleagues' networks of expert stakeholders. However, as was said, we also have the round table that advises on the national performance framework, which Claudia Beamish is on. It includes leaders from the public, private and third sectors, and we used their networks to try to get as wide a reach as possible.

In the consultation, we worked with Oxfam Scotland and the Carnegie UK Trust to go out to communities across Scotland. Our criteria were to ensure that we had coverage in each part of Scotland—certainly in each of the eight electoral regions—and in particular to ensure that, in our community engagement, we went to places such as social clubs, sports clubs and other existing environments in which people already met. On top of that, Oxfam Scotland did a set of street stalls. It looked across Scotland and, in thinking about the

matter, ensured that we had a mix from the most deprived parts of Scotland and the most affluent parts, in order to try to build up as coherent a picture as possible.

John Scott: Would it be fair to say that the process was ad hoc rather than formulaic? I do not mean that in a bad way.

Roger Halliday: To some extent it was ad hoc. It was opportunist.

Roseanna Cunningham: We are saying that we did not set out to do the consultation with a prescribed list. There were some very obvious people to speak to, and as the process went on, it drew in others. There were various ways of doing things. At one point, there was an online survey as well as various kinds of conversations. To describe the process as "ad hoc" makes it sound as if people were just making it up as they went along, but that did not happen. There was not a prescribed list, and we pulled in other people as the process went on.

John Scott: We have identified that 220 bodies, or thereby, were involved. To what extent has the Government responded to stakeholders' views on the outcomes and indicators? Did you go back to those people, who gave the Government their advice, and respond to that?

Roseanna Cunningham: There would be a continuing conversation. It was not a matter of their formally giving a piece of advice and our taking that away and using it to inform what we were doing. A more dynamic process will have been involved in a lot of the conversation.

John Scott: So it is an on-going, interactive process.

Roger Halliday: There were two stages. As I said, at the first stage, we asked a group of people about the kind of Scotland that they want to live in and what is important to them in their lives. That helped us to shape the proposal, which the committee has seen, on 11 new national outcomes.

A second phase involved looking at the indicators that sit behind those outcomes. In doing that, we engaged with a similar group of expert stakeholders and played back the outcomes that we came up with from drawing on all the views. Things were revised slightly as a result of those second conversations about indicators. For example, following a suggestion about the environment outcome, we added the words "enhance our environment". Those words were suggested by stakeholders at that event.

Roseanna Cunningham: It may be worth adding that previous Scotland-wide consultations formed some of the foundation for this. In 2015 and 2016, there were two national public

consultation exercises—one on what a fairer and more equal Scotland would look like and one on what a healthier Scotland would look like. Both of those exercises comprised substantial public engagement. There were over 16,000 participants in public events and over 400,000 people were reached online. That formed a basis for what we were doing.

In addition, I understand that some of our delivery partners—the Carnegie UK Trust and Oxfam Scotland—held street stalls in communities. A lot of organic stuff went on throughout the process that has fed back, not just in a formal sense but in some cases quite informally as well.

John Scott: Naturally, we want to identify that the process was robust.

Roseanna Cunningham: I understand that. The more that I look at the notes, the more I see was going on.

John Scott: I am pleased to see that you are reading them.

Roseanna Cunningham: Absolutely. I have not got this off by heart, I am afraid.

John Scott: There will have been lots of aspirations at the round-table events. How many of them were feasible, measurable and affordable? Can you give a ballpark figure? Was it 30 per cent of the ideas, or 50 per cent?

Roseanna Cunningham: That is definitely a question for others to answer.

Roger Halliday: I will take that one. It is important to mention that, before the review, in 2015 and 2016, we reviewed the environment and rural indicators in the national performance framework—working with Scottish Environment LINK, which is one of our partners—and we introduced indicators on green space and the natural capital asset index. We then had 22 workshops with 250 stakeholders to look at the indicators last year. That generated about 150 ideas, whereas we had 66 indicators. Looking internationally, we saw that other systems that were trying to do something similar on environmental, social and economic measures had 50 or fewer indicators. We had to turn the total from 150 to 50.

The first stage was to look at the feasibility of the indicators, which Mr Scott asked about. The majority of the things that were suggested were feasible, but some attracted a cost for collection. That was one of the criteria for thinking about which indicators to bring in. The other criteria that had to be thought through were whether the measures were robust, whether they were based on good data, whether an increase or a decrease would mean an improvement or a worsening,

whether they would help to measure each of the 11 outcomes and whether they would work together or would measure similar things. We wanted to make sure that we had as wide a set of measures of different things as possible.

The Convener: Stewart Stevenson has a supplementary question. Please be brief.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): This question is for Roger Halliday. Do you think that the final list covers every policy area for which the Government is responsible?

Roger Halliday: The list is not necessarily meant to do that. In my role as the chief statistician, I am aware that we have 79 indicators here, but we publish many more statistics, and—

Stewart Stevenson: Forgive me. I was just being very specific. I understand that there is a lot of detail underneath that. I simply want to see whether there are policy areas that are not included and not covered. I think that you are suggesting that there are. Can you identify what they are for us?

Roger Halliday: That is clearly not a straightforward question. Overall, we have worked to have outcomes for Scotland that are meaningful to people, that align with the United Nations sustainable development goals and Scottish Government policy and that help us to measure progress not just for Scotland but for communities in Scotland. The Scottish Government policies all feed into the outcomes. The indicators in the national performance framework will not necessarily track progress on all Government policies, but we collect a much wider set of data and evidence in order to do that.

10:00

Mark Ruskell (Mid Scotland and Fife) (Green): Good morning. I want to ask about the definition of “sustainable economy”. Does the term refer to economic growth that can continue indefinitely or to an economy that is in line with sustainable development, and how do those differ?

Roseanna Cunningham: The Government regards those as consistent with each other. Obviously, our outcome is to have an “inclusive and sustainable economy”. That is in the overall purpose statement, but it is not the only element. In effect, we are trying to keep economic, environmental and social progress in balance. The Government believes that economic growth is still an important driver of Scotland’s ability to flourish overall and in making sure that opportunities are available, but that growth can only really come via inclusive and sustainable measures.

I guess that the issue is about what lies underneath people's assumptions when they hear the phraseologies. The Scottish Government does not adhere to the notion of economic growth at any cost whatever. When we talk about economic growth or sustainable economic growth, underlying that is the understanding that things have to be kept in balance to ensure that we get the best possible outcomes for Scots. We do not see the two things as somehow inconsistent.

Mark Ruskell: To use salmon farming as an example, is the target to double production by 2030 consistent with sustainable development? You acknowledge that there are tensions between the economic, environmental and social issues. Is that target primarily driven by indefinite economic growth, or does it have a sustainable development aspect?

Roseanna Cunningham: Of course that target will have a sustainable development aspect. It will be achieved in a way that ensures that we balance the environmental issues. Indeed, we should remember that aquaculture has a social and economic aspect. The point is about keeping all of those in balance. No Government will say that any industrial sector can run out of control. All sectors are subject to the application of the same test, and we are looking at balance across the board to ensure that growth is sustainable. It would not do aquaculture any good if the growth was unsustainable, because that would end up leading to collapse. That is the case in almost any sector of our economy.

Mark Ruskell: Is there a limit to growth in the aquaculture sector, then?

Roseanna Cunningham: You would probably need to have that conversation directly with those who are involved in the aquaculture sector. I imagine—

Mark Ruskell: I mean in terms of environmental constraints.

Roseanna Cunningham: With respect, I imagine that any country in the world that has an aquaculture sector might feel that there is a point beyond which it becomes difficult to sustain growth. The issue is about the sustainability of that growth, and I cannot foresee what that might look like in the future, because the technologies, the understanding and the science change all the time, so what might look sustainable now may not look sustainable in five years, and vice versa. All that we can ever do at any one point with regard to any sector in our economy is to make our best estimate on the basis of our current understanding.

Mark Ruskell: Is sustainable economic growth the only way to achieve a flourishing Scotland? Do we need to focus more on wellbeing? Do we have

the appropriate basis on which to make judgments about our progress, through wellbeing?

Roseanna Cunningham: From my perspective, wellbeing is so bound up with people's economic and social lives that we cannot split them apart and separate them from one another. I know from a previous portfolio responsibility that being involved in good and productive work plays an enormous part in people's wellbeing, so economic growth is absolutely fundamental to people's wellbeing. I do not see a way in which we can pit the two areas against each other, and doing so would be a false way of looking at how Scotland, or any other country, works. Defining wellbeing as if it were somehow separate from economic growth or from how we work in terms of the economic aspect of our culture is not helpful. There are things around wellbeing that we can measure; I have just mentioned one that I know from a previous portfolio responsibility, which is that access to good and productive work is absolutely fundamental to people's wellbeing. It is an indicator that would come out of the economic growth side, but would be fundamental to the wellbeing side. I do not think that it is easy to pick them apart.

Mark Ruskell: Is the Government working on indicators beyond gross domestic product, which is problematic because it counts all the bad things as well as all the good things?

Roseanna Cunningham: There might very well be interesting conversations going on elsewhere about how one measures. I know that there is debate about whether GDP is the best way to measure economic growth, and about other ways to do that. The point that I was trying to make is that we cannot just separate out things in a way that would allow us to point out indicators for wellbeing as if they were somehow not also impacted on by the state of the economy: we know that they are.

Roger Halliday: We have a basket of indicators so that we can see economic, environmental and social progress in Scotland. We have had in the framework for quite some time an indicator about mental wellbeing, and we propose to add an indicator on children's wellbeing and happiness to the indicator on children's physical and social development.

The Convener: That moves us on to a line of questioning that I want to pursue. When going through the process for the framework, some things are considered but dropped and some things are not included, which inevitably means that some people will take issue with where we end up. We have gone down from 16 outcomes to 11. Can you give me the rationale for why climate change, in terms of adaptation and mitigation, is not included in any outcomes, and the rationale for

why research and innovation have been removed from the outcomes?

Roseanna Cunningham: Obviously, there has been a lot of movement backwards and forwards, and some things have expanded and others have not. For fairness, I will say that the outcomes that we have chosen stem directly from the consultation that we talked about earlier. That is an important broader statement to make.

It is a fact that outcomes do not fit into neat policy boundaries, so some of the discussion is around individual indicators as opposed to broader outcomes. If something does not sit in the outcomes list, that does not necessarily mean that it is not important or that there are not indicators that relate directly to it.

Our feeling about climate change is that there are already important indicators about it, on greenhouse gas emissions and the carbon footprint, so we have already encompassed it in the framework. The broader climate change outcome line fits into the sustainable economic growth part of the much broader outcome.

The difficulty with an exercise like this is that one can end up replicating everything through every stage in the entire process. That would result in an enormous document, which would mean that it would lose some of its functionality.

There is a conversation to be had about what is in and what is not in. However, the point that Roger Halliday made earlier about the number of indicators that we already have is important. We are at the top end in terms of the number of indicators, when compared to most countries, in this sort of exercise. Most countries set a limit at about 50; we have ended up with 79, which means that we are already pushing the boundaries.

The Convener: As you say, cabinet secretary, the number of indicators has increased from 55 to 79. However, there are no indicators specifically on climate change mitigation and adaptation. An indicator on growth and the green economy was considered, but has not been included. There is nothing about resource efficiency, the circular economy, recycling rates and land ownership. All those are issues that stakeholders have highlighted and which are quite important in your portfolio. What is the general rationale for such indicators not being included?

Roseanna Cunningham: I understand the point, but we have increased the numbers of other indicators that are important to the portfolio. Setting the indicators is a constant balancing exercise, in and of itself. ClimateXChange has developed indicators to monitor adaptation in Scotland, which cover the themes of natural environment, buildings and infrastructure. Those indicators are in the Scottish climate change

adaptation programme, so we do not feel that separate indicators are necessary.

To go back to what Roger Halliday said, we are not trying to encompass everything that can be measured. That would become an impossible exercise. Everything that is measured is already public and available. In trying to inform the framework, we are trying to choose things that are, ultimately, more fundamental.

There were lots of suggestions from stakeholders for indicators that would have covered issues such as climate change leadership and demonstration of commitments internationally. However, a lot of what was talked about would have been extremely difficult to measure, and there would have been issues around comparability. Remember that we must be able to make real comparisons, internally and externally, through time, and that we measure ourselves against other countries. The decisions that have been made in our attempts to keep everything manageable mean that some things that some people wanted to be included are not included, although other things will be brought in that were not there previously.

The Convener: How will the outcomes and indicators be measured in the future? What work is planned in that regard? Will the climate change indicators on greenhouse gas emissions and the carbon footprint identify a target against which to track progress, and will they be revisited after the forthcoming climate change bill?

Sara Grainger (Scottish Government): As you are aware, the Climate Change (Scotland) Act 2009 contains a target for greenhouse gas emissions reduction. The indicator on that is one of the key indicators in the framework and is staying in it. The precise formulation and the target will need to be updated in the framework, following the passage of the forthcoming climate change bill.

The carbon footprint has been in the framework for several years and will remain there. It remains to be seen whether anything to do with the carbon footprint indicator will happen through the bill process; if so, the national performance framework will need to be brought up to date, in that regard.

10:15

The Convener: Is the framework a live document, in many ways?

Roseanna Cunningham: It has to be; there is a constant process. Obviously, there has to be another iteration of the NPF at some point; at no point should it be seen as a final document, for good and all, because that is not how we are working. We look constantly at the issue over

years. I have referenced things that happened before the review because they were important for the review, but the document will keep moving.

Donald Cameron (Highlands and Islands) (Con): Recycling rates appear to have been considered, but were ultimately not included. Why is that?

Roseanna Cunningham: Are you looking for specific reasons why?

Donald Cameron: Yes.

Roseanna Cunningham: Right. Give me a couple of seconds.

There is no circular economy indicator. Are you talking about that or about waste recycling, specifically?

Donald Cameron: I am talking about recycling rates. They appear to have been considered but are not included.

Roseanna Cunningham: We have a measure of the waste that is generated, which is very similar. Should we have a second measure or do we accept that the figure for waste generated is similar enough to address that? That takes us back to the point about replication of indicators.

We chose the measure on waste generated rather than a recycling measure because waste prevention is further up the hierarchy than recycling. Claudia Beamish and I have had conversations in the chamber and privately about what we are actually talking about in relation to food waste; our targets on food waste are about prevention, not recycling. In a sense, we chose the measurement that was hierarchically higher. Because prevention is higher up the hierarchy, it fits better into the broader discussion about sustainability, which I mentioned.

There are many indicators of waste. I dare say that if we legislate for a food-waste target people will argue that it should be in the document. There are lots of things that we could put in, but if we put everything in we would not have a functioning document.

I hope that I have explained why we went the way we did. There is logic to it; it was not random.

John Scott: Forgive me for not knowing this; it is probably my own stupidity. What are the criteria for identifying what should and should not be an indicator? The process seems to be rather arbitrary. How is the committee to judge whether the Government is getting it right? Is there an identifiable list somewhere that we can check, so that we can say whether the Government is doing a good job?

Roseanna Cunningham: We benchmark; we look at what happens in other places, to ensure

that we are not missing things that are done internationally.

I see that Roger Halliday is itching to comment. Before he does, let me say that what is really important, among other things, is that robust information is captured that can be compared with what has gone before, chronologically—because otherwise we cannot show performance—and can be compared against broader international benchmarking.

It is a case of picking indicators that are meaningful. How meaningful they are cannot be determined subjectively; they must be meaningful in an objective sense. That is important, because there is no point in picking an indicator, on publication of which there would be too much dubiety about what it measures.

John Scott: I have a comment to make before Mr Halliday comes in. It is evident that we are evaluating whether the Government is doing a good job in this process, but it is not easy to know how to do that, because the criteria against which you are working are not entirely clear. Therefore, it is hard for us to get a handle on the issue.

Roseanna Cunningham: It is not easy, because it is a large and time-consuming process that we are going through. Ultimately, however, indicators must be objectively robust. As well as being measurable in time—backwards and forwards—they must, from Scotland's perspective, be capable of being looked at across the board and in comparison with international comparators.

The Government produces a vast amount of data and a huge amount of statistics. Some of that information is singular to Scotland, for obvious reasons, and if an element of that information were chosen as an indicator, it would not give us much of a perspective on where we were, from the point of view of our national performance in comparison with performance beyond our boundaries. We are looking at that aspect, as well as at the ability of the data to be tested and to be considered to be highly robust and very understandable.

I do not want to stray into other people's portfolio areas, and I have not looked at the justice performance stuff, but I know from my days as a justice minister that the fact that there is a difference between, for example, the number of incidents reported and the number of crimes reported—both of which are important—can lead to misunderstanding and confusion. We do not want such confusion here; we want the indicators to be straightforward.

Roger Halliday: I have a few points to make. First, the review is being undertaken under the Community Empowerment (Scotland) Act 2015, which requires us to present the outcomes, but we

have decided to go beyond that and to present the whole of the national performance framework, including the indicators. The criteria that we used for the indicators are outlined in the consultation document that we submitted to Parliament, but I will go through them.

There is a technical assessment, which was based on international best practice as laid out by the Royal Statistical Society. As Colin Moffat said, that involves making sure that the data is consistent over time and between areas, and that the data on which the indicators are based is precise enough to make it possible to identify change.

There is a criterion about the meaningfulness of the indicators. We wanted to make sure that the indicators have meaning, so that was part of the work that we did at our workshops.

We wanted to be able to measure progress against each of the 11 outcomes, and to avoid any major gaps in measurement. We wanted to be as consistent as possible with the United Nations' sustainable development goal indicators and, finally, we wanted to make sure that progress would be described not just for Scotland as a whole but, where we have the necessary data, for the various equality groups and for particular areas, which would be identified using the Scottish index of multiple deprivation. When it comes to reporting, we publicly report progress against each of the indicators on our Scotland performs website. If we had good wi-fi in here, any of us could go through that data and check the state of it. We will move from having to report on progress for Scotland overall to reporting on different equality groups and on area-based inequalities.

Mark Ruskell: I want to ask about the indicator on lives lost through poor air quality that you considered. The Scottish Parliament information centre's briefing says that the Government rejected the measure because it

"wanted more whole systems measures".

There is perhaps no better indicator of whether the whole system is working than to measure through a multiplicity of air-pollution sources whether people's health is being impacted. Why was that indicator rejected? What replaces it?

Roseanna Cunningham: First of all, a difficulty with that area is that it is not possible to ascribe cause and effect precisely. I know that a lot of figures are being bandied about, but an awkward aspect of such a measure is that the effect varies enormously depending on individuals' responses to air quality.

A 2010 report produced UK-level estimates of the burden of added mortality associated with ambient fine-particulate pollution—the indicator

was measured in months—but that was based on particulate levels in 2008. That shows another problem with such a measurement: the time lag creates an issue. That UK Government departmental report noted an enormous variation across the UK. In fact, the attributable lives lost in Scotland were fewer than in England and Wales.

We did not consider that such a measure was a useful way to proceed. The UK Government department that instructed the report advised against using the statistics because they are not precise enough to be helpful. That does not mean that we will not continue to look at this area, and see whether there is a better and more effective way to measure it. However, at the moment, we do not consider that using such an indicator in the national performance framework would help us across Scotland. That is partly down to the very particular and localised impacts of poor air quality for certain populations. As a national indicator, it is not particularly helpful.

Claudia Beamish (South Scotland) (Lab): Good morning, cabinet secretary and team. I need to declare an interest. As Roger Halliday has highlighted, I represent Scottish Labour on the round table on the national performance framework, which is convened by the Cabinet Secretary for Finance and the Constitution, Derek Mackay.

Roseanna Cunningham: You should be sitting here. [*Laughter.*]

Claudia Beamish: I would be quite happy to, cabinet secretary.

Mark Ruskell: Feel free to ask her questions.

Claudia Beamish: As my colleague Mark Ruskell says, feel free to ask me questions, although that is not the point of this session.

I emphasise that I have stepped back a little bit from the broader questions about the indicators deliberately because of my role on the round table.

My questions are about the marine environment. My colleague Stewart Stevenson will be asking about the fish stocks indicators, so there should be a pause in responding to that area until then.

What was the process for developing the new indicators? Who was involved in that?

Roseanna Cunningham: That is probably for Roger Halliday, or perhaps Colin Moffat, to answer, because I was not involved at that granular level of the proceedings.

Professor Colin Moffat (Scottish Government): Over a couple of years, Marine Scotland has been looking at the indicators that have been required for things such as the marine strategy framework directive and at how we can best meet the requirements of those aspects,

particularly with regard to servicing and being able to answer questions on the delivery of the vision of having clean, healthy and biologically diverse seas.

Marine Scotland went through a process whereby it considered the existing indicators and the fact that we want indicators that will tell us something that we can act on, as the cabinet secretary said. Our review concluded that we will develop indicators that are associated with the cleanliness of our seas, their biodiversity and the sustainability of our fishing.

10:30

Claudia Beamish: Which groups were consulted in the discussions with Marine Scotland about the marine indicators? I know that Scottish Environment LINK was involved, for example. Concerns have been expressed about those discussions, which I will highlight in a minute.

Roseanna Cunningham: I saw something in my notes a few minutes ago. I ask you to bear with me.

Claudia Beamish: Would it be helpful for me to ask—no, it would not be helpful.

Roseanna Cunningham: I apologise for the delay. I saw the information during our earlier discussion of a different subject.

Here are some of the people who were involved: the Scottish Environment Protection Agency, which I dare say would have had a lot to say about the issue, Scottish Environment LINK, the Marine Conservation Society, the Scottish Wildlife Trust, the WWF and Friends of the Earth. Claudia Beamish will have known about the Marine Conservation Society because it was also a round table panel member—she said, pointedly.

Claudia Beamish: I am asking for the record.

Roseanna Cunningham: The Scottish Wildlife Trust was involved in indicator workshops, the online survey and structured conversations; Friends of the Earth was involved in the online survey; the WWF was involved in indicator workshops; and SEPA was involved in the indicator workshops and the sustainable development goals workshops.

That list probably covers the organisations that you might think would have issues about some of this stuff, with the Marine Conservation Society being the most prominent of the third sector witnesses.

Claudia Beamish: Thank you; that is helpful.

Could you help us with a question about the development of the marine and terrestrial ecosystem health indicators? Our committee notes

say that they are “To be developed.” I would welcome greatly a diversity index for both land and marine environments. Does the cabinet secretary or anyone else have any comments on the decision not to include the marine and terrestrial ecosystem health indicators?

Roseanna Cunningham: The ecosystem health indicators that SEPA currently publishes are too limited in their coverage of the marine environment, particularly with regard to the state of the offshore environment. That is why Marine Scotland went for the marine strategy framework directive indicators instead. A new biodiversity indicator is proposed, which aims to capture the state of both terrestrial and marine biodiversity. I think that it is in development.

Roger Halliday: That is right.

Claudia Beamish: That is helpful, because I understood that previously the indicator focused only on terrestrial biodiversity.

Roseanna Cunningham: Yes. We are looking at how it can be more widely drawn.

Claudia Beamish: Moving on to the contaminant-region combinations assessment, can you or one of the panel give a short explanation of that?

Roseanna Cunningham: I can tell you what I have been given as an explanation; if it does not suffice, perhaps one of my colleagues will come in.

Claudia Beamish: I am interested to know how it will fit into the marine environment assessment, because it is a complex assessment arrangement. Will that be part of the overall indicator for the marine environment?

Roseanna Cunningham: As I understand it, there are five groups of contaminants that are monitored annually in four regions around Scotland, covering both fish and shellfish and sediment. For the animals, if you like, and the sediment in turn—this is where we have to have some understanding of how the science works—we are talking about the mean concentration of each contaminant group. There are five groups, four regions and two measurements: one for the animals and one for the sediment. The mean concentration of each contaminant group in each region is compared to a threshold, which is typically called the environmental assessment criterion. If the mean concentration is below the threshold, the contaminant group is unlikely to cause harm to marine life, which means that the specific contaminant and region combination has good environmental status.

We can see that, with five contaminant groups, four regions and two measurements, the combinations are quite extensive; in effect, there

are 40 assessments of environmental status. The indicator will be the proportion of those that show good environmental status, and it will therefore be a broad brush indicator across those 40 assessments. For example, if more than 20 show good environmental status, the indicator goes up; if fewer than 20 show that status, the indicator goes down.

However, that overlies myriad different pieces of information. We therefore need to adapt it to assess Scotland's marine environment by focusing on the four regions around Scotland of the northern North Sea, the Scottish continental shelf, the Minches, and the west of Scotland and the Irish Sea. We will try to provide an overall indicator out of all that underlying information to give an indication of the cleanliness of Scotland's marine environment. An overall assessment of the marine environment will need other indicators, such as fish stocks and biodiversity.

I hope that that reproduction of the explanation that I was given is helpful, but more technical bits of information might be required.

Claudia Beamish: Perhaps we have gone as far as we need to on this one.

Roseanna Cunningham: Is that more information than you wanted? I think that that demonstrates the complexity.

Claudia Beamish: It is very helpful. I hope that it answers, in some sense, a point raised by my colleague John Scott, because we want to know that such things are measurable and how they are measured.

Finally, before I hand over to my colleague Stewart Stevenson on the fisheries issue, can anyone clarify how regularly the testing that has been described will be done, so that we can see any differences?

Professor Moffat: We take samples every year. In January we undertake a cruise right round Scotland that covers all four regions, and we collect the samples annually.

Claudia Beamish: If it was in July, I might ask if I could come with you. [*Laughter.*]

Stewart Stevenson: Let me start by asking about a couple of things for the record. First, am I correct in saying that the area that we are looking at in relation to fish stocks goes out to the 200-mile limit or as far as an adjacent jurisdiction's boundary?

Roseanna Cunningham: Yes.

Stewart Stevenson: Secondly, how has the indicator that is being proposed changed from the previous one?

Roseanna Cunningham: That is a little outside my comfort zone.

Professor Moffat: The key point is that we wanted the new indicator to relate far more to the sustainability of the actual fisheries. The current indicator relates to the proportion of stocks that are within the total allowable catch, which does not directly tie in with the sustainability of the fisheries and the fish stocks. In the new indicator we will move to using fishing mortality, which directly ties in with the sustainability of the fish stocks.

Stewart Stevenson: The TACs, of course, are set politically and therefore they may or may not relate to science—I think that we all accept that—whereas maximum sustainable yield is a scientific measure, so I suspect that that move is a good thing.

However, the different fishing areas around our coasts have very different sustainabilities and MSYs for different stocks. How is that fact reflected in the way that we look at these things? Certain stocks that are under a lot of pressure in the Clyde, on the west coast, are relatively abundant in the North Sea.

Professor Moffat: Basically, we are working to determine what we call the F_{MSY} , which is the fishing mortality rate that will give us maximum sustainable yield and which is determined for specific stocks in specific areas, such the North Sea, the west coast or the Clyde. The key thing is that we measure those stocks to try to ensure that each of them is sustainable. Then we will look at the percentage of those stocks across the whole area that are within F_{MSY} .

Stewart Stevenson: Before you proceed, you said "the whole area". Are you referring to the whole of the Scottish waters or to particular fishing areas, such as divisions IVa and IVb, et cetera?

Professor Moffat: Particular fishing areas are what we are looking at.

Stewart Stevenson: So you are looking at each area, but we are ending up with one indicator.

Professor Moffat: Yes.

Stewart Stevenson: If, for example, divisions IVa and IVb are doing well for haddock, but subarea VII is doing incredibly badly for haddock, how would that be reflected in the indicator?

Professor Moffat: We will have the basic data for each of the areas—let us say, for example, haddock data for the west and for the east. That data will give us the specific value for those areas. The final indicator that appears will be the percentage of those stocks that are within F_{MSY} , but we will have the data for the specific stocks in the specific areas that underlie the final indicator that is quoted.

Stewart Stevenson: I understand that there is a huge amount of data and I am confident that it is being measured, recorded and published, but I am back to the fact that we end up with one indicator. In other words, if the haddock stocks on the west coast of Scotland were to vanish to far below F_{MSY} , would that mean that the indicator would go red, even though the haddock stocks everywhere else—were the west coast area not being considered—would certainly be green?

Professor Moffat: The point that you have picked up is very relevant, in that, with any indicator for which we take data and are trying to get it down into one specific outcome, there is a chance that we would lose some of the underlying granularity. Based on the percentage as it is, the indicator would not necessarily go red if one of the stocks went down so that its spawning stock biomass was below the acceptable limit. However, in planning and developing the indicator, we will look at its granularity.

10:45

Stewart Stevenson: Do forgive me. I am absolutely content that Marine Scotland will manage at a granular level and will respond to granular problems. I understand that and am not trying to suggest otherwise; on the contrary. It is just that we are trying to produce a relatively small number of indicators—albeit that we have more than what appears to be the international standard of 50 indicators—and I wonder what the value of the indicator actually is when it might be green but you have very significant problems that are geographically constrained. That is my issue. I am perfectly persuadable, but I just do not get it at the moment.

Roseanna Cunningham: I suppose that, at one level, our response is similar to the one on contaminants. We have so much detailed information that any one of those indicators—or any handful—could drop below what could be considered acceptable. However, the overall picture remains good. From my perspective, that would apply equally in the situation that Stewart Stevenson has talked about. In a sense, a little bit of the same conversation was had on air quality as well, because we know that, for vast parts of Scotland, air quality is fine, but there are small areas in which it is not. In such circumstances it is a question of having a national indicator and trying to find the right way of expressing that. That applies on this point as well. To a certain extent, even some of the regions that we are talking about are artificial.

Stewart Stevenson: Oh, yes.

Roseanna Cunningham: We could change the regional boundaries for measurement and come to

completely different outcomes, so they are a bit arbitrary to start with.

I would have thought that it remains the case that, if haddock stocks, for example, are good in all but one region, the picture is good. Clearly, that does not mean that, as a Government, we will not look at the problem that is in that one area. However, it does not pull down the whole of the national picture unless there is more than one area with the same problem. I guess that that is where we are with a lot of that. A lot of the indicators will have very detailed, granular information lying beneath them. However, at the end of the day, almost every bit of statistical information that we put out is compiled from a set of myriad things that are good, middling and bad, which we amalgamate to produce a picture.

Stewart Stevenson: Cabinet secretary, I am perfectly content with that. The philosophical point is that it touches on all the indicators.

Roseanna Cunningham: Probably.

Stewart Stevenson: I want to ask a little bit about fish mortality and how we assess that. Many of the landings are not at our ports, even though the fish might have been caught in our waters. Indeed, 60 per cent of our catch is in foreign vessels; many of them land at our ports, but many do not. If they are up at the top left of the map, it may be much more convenient for them to go to Norway, for example. How do we deal with that mortality? Are we looking only at commercial stocks or at things that are not commercial stocks but are part of the mortality of the fishing process? How do we account for that?

Professor Moffat: As the committee is probably aware, mortality per se is quite difficult to measure. Therefore, first we have to measure the abundance of the different stocks in the different areas. We do that through our classical fisheries surveys.

You make the point that some of the fish that are caught within our waters are landed elsewhere. That is the reason why the assessment is done through the International Council for the Exploration of the Sea. We use data not just from Scotland but from Norway and other countries round the North Sea, for example to work out the abundance of the fish. We then work out the catchability of the fish to allow us to calculate the fishing mortality rate. As I say, we do that in conjunction with other countries. The surveys are common to Scotland and the other ICES member states—indeed, the ships that we use are calibrated.

Across the ICES area, scientists pick up fish at the landing ports. We try to measure 200 fish per 1,000 tonnes of fish that are landed across the fishing communities, which means that we analyse

1.6 million fish a year across the ICES area. We take a huge sample of the population, not just from Scottish ports but from the whole area that we analyse. That is how we determine fishing mortality in the areas where multiple countries are involved.

Mark Ruskell: Is MSY precautionary enough for all fish stocks? I have heard arguments that, with pelagic fish, we should aim for a target below MSY.

Professor Moffat: MSY is set, but we have precautionary limits relating to the spawning stock biomass, which we call B_{pa} —the biomass precautionary approach. We do not just look at fishing mortality; we look at the spawning stock biomass, because one of the challenges that we have is that the fish year class may vary significantly in any one year. That is why we assess the current state of the population. We can see year classes coming through the system. If we have a particularly good year when a lot of little fish are born, in a few years' time, that year class will become very large, and therefore we know that the abundance will have increased. Actually, we have a very fluid picture.

Mark Ruskell mentioned the pelagic stocks, which we assess in a slightly different way. We assess the demersal stocks—those that are on the ground—through trawling and capture but, with the likes of mackerel, we do a mackerel egg survey. We have to measure the stocks in slightly different ways to come up with the required information. To go back to fishing mortality maximum sustainable yield, the key thing is that we do not just take that particular value when we do the calculations. It is a good indicator for providing information for the national performance framework but, as part of the overall picture, we also take account of the spawning stock biomass.

Finlay Carson (Galloway and West Dumfries) (Con): My question is on the change in the biodiversity indicator, which, as we heard, has been broadened to include terrestrial and marine biodiversity. I will put two or three questions together, to make it easier for you to answer them. Why is there no clear descriptor for the biodiversity indicator? Can you provide more details on what the marine biodiversity indicator will be? Is monitoring activity in place to provide baseline data for that indicator, or will new monitoring activity need to be developed?

Roseanna Cunningham: The new indicator is in the process of development, so it would be difficult for me to answer very specific questions about it. We are trying to develop it so that it covers both marine and land. An idea that we are looking at—Claudia Beamish referred to this—is expanding the current indicator, which is based on terrestrial birds, to cover both sea birds and

wetland birds. However, we do not want to close off our options at this stage. Another possibility would be to select a number of key species from each environment—terrestrial and marine—assess the direction of travel for how healthy they are and make an overall assessment. We are still looking at how we will develop the new biodiversity indicator. Do we have a timescale for getting something that is more definitive?

Professor Moffat: We do. We want to have the indicator developed by 2019. A key point is that there are already indicators relating to marine birds—marine bird abundance and marine bird breeding success or failure—that are reported for the greater North Sea and the west coast. We currently have a data stream that allows us to report on the status of marine birds. The OSPAR Commission reported on this as part of its intermediate assessment 2017. The commission used 25 individual biodiversity indicators to try to assess biodiversity in our seas. That gives an idea of the number of biodiversity indicators, and the commission will probably increase the number to about 40 different indicators. The good thing is that, for birds, cetaceans and seals, we have a significant amount of data already.

Finlay Carson: My next question was going to be whether there is enough scientific knowledge about the biodiversity. Who are you consulting on the indicator, and will it be aligned with European Union and international biodiversity strategies?

Roseanna Cunningham: I have already read out a number of the relevant groups involved in the consultations. I expect that they will have been involved in the consultation on biodiversity. Some of them, such as the Marine Conservation Society and WWF, will have been more interested in this indicator than others. They are already actively involved. I do not know whether the intention is for consultation to be more specific and to go beyond those groups. I imagine that a lot of the individuals we have talked about, such as the academics providing input, would be relevant here too. Professor Moffat may want to add to what I have said. That indicator will have been discussed, along with others, as part of the work that has been done already.

Professor Moffat: There has just been a workshop at the UK level on biodiversity indicators and it covered a significant range of organisations, such as the joint Nature Conservation Committee, SEPA, Scottish Natural Heritage, the Environment Agency and Marine Scotland. As part of the UK's commitment to the marine strategy framework directive, the report on the UK position relative to the indicators will go out for general consultation later this year. All the biodiversity indicators that we have used to date will be put out for full public consultation.

Roseanna Cunningham: On the international side, we are a contracting party to the OSPAR convention. We are involved in those international organisations and that is part of our thinking. I have frequently indicated that I want to ensure that Scotland continues to perform in relation to its international obligations, notwithstanding any word beginning with B.

The Convener: It could be a fascinating work in progress. Can I secure a commitment from you to update the committee in due course as that progresses, because we are obviously going to take an interest in it?

11:00

Roseanna Cunningham: Do you want us to update you on the specific issues that the committee has expressed an interest in this morning or to do so in broader, more general terms?

The Convener: I would like you to give us general updates, but we will obviously be particularly interested in hearing about progress on the specific theme of biodiversity that we are exploring at the moment.

Donald Cameron: This is a very general question, but one of the issues that have emerged is policy coherence. There is an endeavour that we all share, which is that different policy areas are able to work together. How will the framework support the development of a coherent policy across the Government and the wider public sector? Where do you see it helping?

Roseanna Cunningham: First, it is about building up an objective picture of economic, environmental and social progress. In and of itself, getting that objective picture of where we are is important when we are developing policy. As ministers, we will continue to use the data alongside other evidence. As we have already explored, there is a great deal more information out there that can be added to specific policy areas. We take the national performance framework information but we also look at a lot of other evidence that we have already discussed here to ensure that we are making progress in a coherent way.

That is an on-going process, as you would expect, and I assume that almost any Government would try to do precisely the same thing. The indicators are available to ministers and the wider public at the same time through our website; we get advised of progress against the national performance framework at the same time as the rest of Scotland. We see straight away whether areas within our Cabinet responsibilities are improving or otherwise or are simply level pegging. We are constantly getting updated on

that. There is probably a cycle for that, but they seem to come through relatively frequently. The indicators are put in front of us as the cabinet secretaries responsible for particular policy areas so that we can look into them. That then leads me to respond by asking, "Why is this going down? What is the story behind that? Should we be doing something different?" In a sense, that is really what this is all about.

I would expect parliamentary colleagues to use the national performance framework for the same purpose—I do not know whether they do. If the national performance framework indicators were going in the wrong direction in any particular policy area, as well as expecting that the cabinet secretary involved would be looking at that area and asking, "How has that come about?", I would expect parliamentary colleagues to be looking at those indicators and using them as a tool with which to explore the issues in that area. That is the sum total of what the national performance framework is there for.

The Convener: Thank you, cabinet secretary. That has been useful and you have undertaken to update us in due course as matters progress. Thank you for giving evidence. I will suspend the meeting to allow for a change of officials and then we will move on to the Scottish Crown Estate Bill.

11:04

Meeting suspended.

11:09

On resuming—

Scottish Crown Estate Bill: Stage 1

The Convener: The third item on this morning's agenda is evidence on the Scottish Crown Estate Bill. We are joined by the cabinet secretary, Roseanna Cunningham, and her officials Douglas Kerr, David Mallon and Mike Palmer. Cabinet secretary, do you wish to say anything at the outset before we move to questions?

Roseanna Cunningham: Yes, convener. I have an opening statement for this agenda item. To set the generality, the Scottish Crown Estate Bill proposes new powers for the Scottish ministers to change who manages Scottish Crown Estate assets and opens up the possibility of local authorities and communities taking control of the management of those assets.

The Crown estate consists of a diverse portfolio, including thousands of hectares of rural land, half of Scotland's foreshore, urban property and sea bed leasing rights for activities such as renewable energy. We quite quickly came to a view that a one-size-fits-all approach was simply not practical. Therefore, the bill lays the foundation for changes in the management of individual assets. We want to maximise the benefits of the Crown estate for communities and the country as a whole, while ensuring that assets are well maintained and managed with high standards of openness and accountability.

I know that the bill and the proposed arrangements for the Scottish Crown estate are complex, so it is understandable that there will be some misunderstandings. With that in mind, I thought that it might be helpful if I explained how we see the financial flows working, and I hope that members have had circulated to them our attempt to produce a paper that allows a simple explanation in flowchart form. How effective it is will be for members to decide. The paper has not been circulated as a basis for members' questions so much as with a hope that, by putting it into that form, we have made life a little simpler in terms of understanding what is happening.

The first and most important thing for everybody to understand—by "everybody", I mean those beyond the committee, given that the committee knows this already—is that the Scottish Crown estate has not brought any new money into Scotland. The UK Government's block grant to Scotland has been reduced by the estimated annual amount of net revenue earned by the Scottish Crown Estate assets. Under the terms of the Scotland Act 2016, the net revenue from the estate—the income from leasing, licensing and all

the other Crown Estate Scotland activities, minus the costs of managing the assets—is paid into the Scottish consolidated fund. We are clear that whoever manages the assets has to

"maintain and seek to enhance"

the value of those assets and the income arising from them, otherwise Scotland as a whole is out of pocket.

However, the money that is earned by the Scottish Crown Estate assets can now be used differently. The net revenue that is generated by the marine assets out to 12 nautical miles will be disbursed to the three islands local authorities and the other 23 coastal local authorities. The local funding will not be hypothecated, but we would expect the local authorities to be transparent and accountable to their communities on how that money is spent. We are in constructive discussions with the Convention of Scottish Local Authorities on an interim mechanism for local authority areas to receive a share of the revenue, and we expect to reach agreement on that soon.

As members know, the bill places a duty on the manager of an asset to

"maintain and seek to enhance"

the value of the asset and the income arising from it. When the management of the Scottish Crown Estate assets was transferred to Scotland, we inherited the pre-existing arrangements, which mean that whoever manages the assets—currently, it is Crown Estate Scotland (Interim Management)—can retain 9 per cent of the gross revenue for investment in the estate, for example for renovations and repairs to farm buildings or the purchase of new assets. Thus, before the net revenue is surrendered by the manager to the consolidated fund, the 9 per cent figure is subtracted. We are keeping that facility in the bill, but we are taking the power to be able to vary in the future the percentage that is subtracted. It might be that some assets need more capital investment than others and that provision in the bill will allow a more responsive approach to be taken.

That is not the only way in which managers will be able to invest in the assets that they manage. At present, the Crown estate is managed as a single estate, although there are many different types of assets. If one part of the estate is not earning enough income to cover its maintenance and management costs, it can be subsidised by the better-performing assets, which we all know as cross-subsidy. We want to keep the ability to cross-subsidise even when there are several managers of the assets. We are taking powers to enable ministers to direct a manager to transfer a sum of money from their account to another manager's account. In that way, a community

organisation should be able to take over the management of a local asset, even if the asset will not in itself generate enough income to cover costs. To be clear, that money would come from a manager's Scottish Crown estate accounts and not from a manager's personal accounts. The bill requires a strict separation between a manager's Scottish Crown estate accounts and any accounts of the manager's own.

11:15

The bill also sets up a national governance framework that will specify accounting and reporting procedures that should result in openness and transparency about the management of the assets, whether they are managed locally by communities or nationally by Crown Estate Scotland.

I put that statement firmly on the record because there is a bit of confusion out there about what exactly is going on with the devolution of the Crown estate to Scotland.

The Convener: We will cover some of that as we go along.

To kick off, I have a question about the bill's vision and purpose. If we came back here five or 10 years from now, what would be used to judge whether the bill had been a success? What would we look for the Crown estate to have delivered for Scotland?

Roseanna Cunningham: A lot of things could be referred to but, ultimately, the aim is to ensure that the Crown estate operates to the benefit of Scotland and its communities. There has been a long history of concern that the Crown estate has not functioned with community interests at the forefront. That is an old criticism, which the committee's predecessors took up.

The benefit to Scotland is financial, as I outlined, but it is also socioeconomic and environmental—it encompasses everything. We will look for managers, whoever they are, to emphasise the wider benefits more when making decisions.

In five or 10 years' time, I hope that at least some local authorities will have taken over direct management. At the moment, most of the interest is from a handful of authorities, such as Orkney Islands Council, Shetland Islands Council, Western Isles Council, Highland Council—perhaps not even that one—and Argyll and Bute Council. Other coastal local authorities have not expressed a strong interest.

Five or 10 years into the future, I hope that more coastal local authorities will have considered and taken on management, and I hope that more community organisations will have done so. I do not want the conversation to be just about

devolution to local authorities; it is also about communities. In five or 10 years' time, I hope that a number of communities will have taken on management, because communities in particular felt that their interests were not being taken into account.

In my opening statement, I outlined the net revenue issue. In five or 10 years' time, I very much hope that the Crown estate will be contributing to, and not a drain on, the Scottish consolidated fund. That is a fairly fundamental point. I hope that local authorities will use the net revenue from the marine assets out to the 12 nautical mile limit to benefit coastal communities, which is why I made a point about transparency and accountability. We will not hypothecate the money, but its purpose is to enhance coastal communities. In five or 10 years' time, I hope that a significant percentage of Scotland's coast, if not the whole coast, will be tied up in such a way.

I am sorry if I went on too long.

The Convener: Not at all—you have led into my supplementary question, which I ask with my constituency and area hat on. You talked about local authorities securing funding that they have not had in the past and about transparency and accountability. I do not want to put words in your mouth, but would you expect a local authority that inherited a sum of money from such a coastal source to deploy it to address issues such as coastal erosion?

Roseanna Cunningham: A coastal local authority might very well want to consider that. Depending on which local authority we are talking about, there will be different drivers for what it wants. However, the expectation from the Government—as well, I suspect, as from the people on the ground—is that the money that any local authority obtained through the mechanism would be used for the betterment of coastal communities in some way. The amounts of money that are transferred will be transparent—you will know exactly what the money is—so everybody will be able to track how they are spent. I suspect that it would not be a wise move for any coastal local authority to displace that money elsewhere.

The Convener: Would it be a recurring sum of money as opposed to a one-off payment?

Roseanna Cunningham: It would be an annual process. The amount of money will not be exactly the same every year, but it will be roughly the same. There will be a short-term, interim distribution mechanism to get us over the first year or two. The form of distribution may change but there will be an understandable, logical calculation that people can see and significant and specific amounts of money will then emanate from that to each coastal local authority.

The Convener: You indicated that there is dialogue with COSLA on that. How soon are we likely to get an indication of what the sums of money would be or of the distribution mechanism?

Roseanna Cunningham: I do not know whether they have had time to do it, but I have asked officials to give us an indication of what it might have looked like last year or the year before on the basis of some of the distribution models that we are discussing for the interim process.

We are still hashing out with COSLA what the final distribution model will look like. I do not know how close we are to determining that. It is a difficult one to gauge. Let me put it this way: the first calculation for payment for the year 2019-20 will be next March. For understandable reasons, that will, of necessity, have to be on an interim distribution model. However, the fact that the payments are annual is a pretty big incentive to stay at the table until a decision is properly made.

The Convener: You can provide us with information as it becomes available, cabinet secretary.

Roseanna Cunningham: Yes; we will do that.

John Scott: You said that, although the Crown estate is a contributor to the consolidated fund at the moment, you hope that, in future, it will not be a drain on that fund. Given the expectations that have been raised, is there a real risk that there will end up being a net loss?

Roseanna Cunningham: No; I do not think that that will be the case in Scotland-wide terms. However, that is why we want to retain the cross-subsidy. It would be difficult to say that the new managers will have to run some specific assets at a profit when that has not been the case before because those assets were cross-subsidised. That would be an unfair imposition.

Maintaining the cross-subsidy enables us to even out profit and loss across the whole estate. I know that there have been debates about what aspects of benefit are important, but that shows why getting value out of the management of the estate is important. Rather than it being a risk that there will be a net loss overall, the issue might be that people who are managing a local asset forget that they are parts of that national figure. The danger is that they become so focused on their issue that they stop seeing themselves as part of the national picture.

The money is not new. Although it is coming in to the consolidated fund, money has been removed from the fund in anticipation of that. It is absolutely imperative that everybody who manages a Crown estate asset, whether that is Crown Estate Scotland, local authorities or communities, does so to the very best of their

ability, with the outcome of success at the forefront of their mind.

John Scott: Notwithstanding that, it appears that there is a risk that the Crown estate will not be a net contributor to the consolidated fund. However, I will move on.

I declare an interest as a farmer. On the management of assets at national and local levels, in its consultation on the long-term arrangements for the Crown estate, the Scottish Government set out a table that indicated at what geographical level it considered different assets would be managed most appropriately. Does the Scottish Government still hold broadly the same view on that matter as it did at the time of the consultation? What is the Government's view now on the assets that, at the time of the consultation, needed more consideration?

Roseanna Cunningham: I do not think that we have made final decisions on the asset split between national and local levels. What we indicated at the outset is sensible and likely to be the basis on which we move forward. We have already had a conversation about not all assets perhaps being sustainable in their own right, and I do not want financial burdens to be placed on communities or local authorities, which would be invidious. Notwithstanding John Scott's pessimism, I do not see from the national picture there being a risk in that regard. It would be an unfair imposition to put people or organisations in a position in which they have to manage assets that are not sustainable in their own right. What we are doing will give us good information on whether some assets are likely to require cross-subsidy. We should not forget that we have not really looked at Crown estate finances in this level of detail in the same way before.

From a practical management point of view, some issues need to be taken on board. We consider there to be a case for the management of the sea bed, particularly the 12 to 200 nautical mile zone, and leasing for strategic national infrastructure, such as telecoms, cables, pipelines and so on, to be undertaken at the national level. We also heard, as did the committee, very strong submissions from tenant farmers on the Crown estate's landed estates on what they wanted to happen. We have responded by taking the view that, at this stage, management of those estates should be retained as part of the national management of the Crown estate. That position could change only if the people who are involved actively in the farming on those estates wanted there to be some change and, at this point, there is no indication that they want any change.

John Scott: Thank you very much.

Roseanna Cunningham: I am sorry—I have just been handed another note. I am being reminded that the rising income for renewables will mean that overall net revenue is expected to increase; we are back to John Scott's very pessimistic outlook on the overall picture.

I also flag up that we might charge some assets at less than market value, but overall it is not expected to balance out as a drain. We will keep a constant eye on the matter anyway.

The Convener: That is the expectation but, of course, that is determined by external factors. For example, offshore wind development will proceed only with contract for difference support, so there are factors at play over which you have no control.

Roseanna Cunningham: There might be, but that is the purpose of the way in which we have set up the system.

Mike Palmer (Marine Scotland): On the risk of a drain on the Scottish finances, I remind the committee that section 7 will place a clear duty on each manager to

“maintain and seek to enhance”

the value of the assets, which reflects the importance that we place on the financial efficiency of the Crown estate in Scotland.

11:30

John Scott: In that regard, promises appear to have been made and expectations appear to have been raised that much of the income from the Crown estate will now go to local communities and councils. There is a job to be done on managing expectations.

The Convener: We will come to that in due course.

John Scott: Thank you for reminding me, convener.

The Convener: I will let Mr Stevenson in on that point.

Stewart Stevenson: I will ask a question about the managers who take over from the Crown Estate, particularly those who represent community interests. In what has been said, it has been recognised that some of the assets that will be managed by community bodies are, in accounting terms, liabilities. Under section 7, managers must maintain the value of the asset, but there might be very limited opportunity to seek to enhance it.

I will ask an accounting question. I presume that the community body will be a limited liability company or be registered as a charity—it will have some formal structure. How will it deal with the fact that its only asset is, in fact, a liability in

accounting terms? Who stands behind it to ensure that it meets the legal requirements for it to balance its internal books?

I think that that is a question for Mr Palmer, but I could be wrong.

Roseanna Cunningham: I am definitely not doing accounting questions.

Mike Palmer: I will have a first stab at answering; David Mallon might want to come in on some of the detail.

There would be a separation between the Crown estate elements of that organisation's accounting and any other elements. It is important to understand that at the outset.

Stewart Stevenson: That goes to the heart of my question. The Crown estate part is separate and separately accountable but, in some cases, will never be anything other than a drain and there will be no expectation that it will be otherwise.

Roseanna Cunningham: That is why we want to maintain the cross-subsidy.

Stewart Stevenson: I understand that point. I am only asking about what happens in accounting terms. Does that mean that the cross-subsidy has to appear as an asset for the organisation and, therefore, it needs to know what it is before it gets it?

Mike Palmer: I defer to David Mallon on that.

David Mallon (Scottish Government): I will attempt to answer the question. It is a hypothetical question and there is a prior question about whether it would be wise to give a loss-making asset to another body. There may be situations in which that is considered a good thing to do.

In accounting terms, the cross-subsidy is an important part of the framework because the accounts of that manager would show not only what income it received directly, but where there was an injection of funding through the cross-subsidy arrangements to enable there to be a zero balance sheet from year to year. The accounting is designed to be flexible to take account of that scenario.

When it comes to the duty in section 7 to

“maintain and seek to enhance ... the value of the assets”,

if the income is zero at present, it is not too challenging to maintain it at that level. Indeed, it might be that the asset has just been underutilised to date because the national manager has focused on bigger assets. Through further devolution, a local community organisation might be able to make more of that asset and, therefore, potentially enhance the value.

Stewart Stevenson: That is fine but there will be assets that will always be a negative that you might feel would be better managed by the community but not necessarily to the extent of becoming positive income generators. Who bears the liability, ultimately? In other words, to where does that liability transfer? Is it consolidated with Crown Estate Scotland's accounts or the Government's? Obviously, in the circumstances that we are discussing, what appears on one balance sheet as a liability has to appear on another balance sheet with the opposite sign.

David Mallon: That brings in the concept of the Scottish Crown estate. The cross-subsidy could be provided by Crown Estate Scotland, or it could come from another manager on the Scottish Crown estate. In such scenarios, the liability would be covered by the Scottish Crown estate, rather than the community organisation.

The Convener: Mr Stevenson took us off on a slight tangent—

Stewart Stevenson: As he does.

The Convener: We will stay with the subject for now. Do you have a clear picture of Crown Estate Scotland's liabilities as things stand?

David Mallon: Before the transfer on 1 April 2017, quite a lot of work was done to better understand the liabilities. In simple terms, they boil down to landlord responsibilities and employer responsibilities. The landlord responsibilities form the more unusual aspects of the liability question; they split into contingent liabilities and residual liabilities.

Contingent liabilities refer to the expectation that, after part of the estate has been used, the landlord will restore it to the condition that it was in before. Through a lease agreement, the requirement to restore is normally for a developer—for example, if farmland were used for mining activity, the developer would be expected to restore the land to a condition that was fit for farming or another use.

Contingent liabilities sit with the manager, because of the possibility that a developer might not be able to honour its undertakings. If that were the case, Crown Estate Scotland, as the landlord, would be expected to pick up the cost.

Residual liabilities arise after an activity has been decommissioned. The Government is responsible for ensuring that a decommissioning scheme is in place for a wind farm, for example, and it is for the developer to complete that scheme. However, at the time of decommissioning, the developer might get approval not to remove all the infrastructure from the marine environment, so some infrastructure might remain in the water. If a third party incurred

damages because of that, residual liability would exist.

Those are the main liabilities. There are also less expensive ones, such as maintenance of property and stewardship of the estate.

The Convener: I will come to that; I note that Mr Stevenson is champing at the bit. A subjective element must exist, because although a tenant farmer's view might be that there is a backlog of repairs, Crown Estate Scotland might not entirely share that view. It must be difficult to gauge the level of liability entirely.

David Mallon: A difference of opinion might exist, and the estimation of future requirements needs assumptions to be made. A lease agreement between a farmer and Crown Estate Scotland normally makes it clear what Crown Estate Scotland's responsibility is and what the farmer's responsibility is. There is usually a mixture of both aspects, but the agreement has clarity. A farmer might sometimes feel that something is for Crown Estate Scotland to undertake, when in fact Crown Estate Scotland has written it into the agreement that it is for the farmer to undertake. However, dialogue usually takes place between the two parties to try to resolve the situation.

John Scott: In its submission, Scottish and Southern Electricity Networks said:

"Asset managers should be responsible for the liabilities associated with their assets",

while Community Land Scotland suggested including

"provisions enabling Scottish Ministers to assume responsibility for liabilities"

when communities manage or own assets. Which view does the Government prefer? When devolving power to community groups, should the Scottish ministers assume responsibility for potential liabilities?

Roseanna Cunningham: We have included in the bill a power for ministers to assume responsibility for potential liabilities when we devolve assets to local community groups, but we would consider that case by case. We would not want to proceed that way across the board. That is one of the matters that would be weighed up when the application is made, at which point we would look into all the facts and circumstances around a community group that wished to take over the management of an asset.

John Scott: On a bigger scale, I think of the East Ayrshire coalfields, for which East Ayrshire Council created insufficient bonds, as I recall. There was a huge liability for the extraction of coal when all of that went terribly wrong. Do you envisage a system of insurance such as bonds

being established by the bodies that use the assets?

Mike Palmer: In essence, the bill proposes that such cases be taken case by case. A judgment would have to be made on each business case. In most cases of a community organisation or a local authority making a proposal to manage an asset, we would expect both the assets and liabilities to be transferred to them.

One would normally expect that that would be an incentive behind the organisation's business case. We would not particularly expect organisations to wish to manage an asset for which they were at risk of taking on liabilities that they did not feel that they could deal with and for which they might need to get into some complex arrangements for bonds. However, we are trying to set up a discretionary system that is open to any kind of case being made. Each case would need to be considered in the round. Issues such as whether it is reasonable for liabilities to be managed away from that community organisation at a more national level and whether that can be agreed would need to be considered at the point at which the case was advanced.

Roseanna Cunningham: Basically, the presumption is that the liabilities would pass to the new managers along with the asset. That would be the norm and I expect that that would happen without much discussion or conversation in the vast majority of cases. There may be the odd occasion when a bigger conversation about liabilities has to be had and we have allowed for that. However, the presumption under which we operate is that organisations will take on liabilities as well as the asset, which is what you would expect in the normal course of events.

John Scott: Absolutely. I just want to be absolutely clear about who the banker of last resort is for the once-in-a-generation, inadvertent liabilities that emerge and could not have been foreseen. I presume that it is the Scottish Government.

Roseanna Cunningham: Those are issues that we have to deal with all the time. It is a conversation that we have to have in Government across a range of matters, not just the Crown estate. We are talking about trying to put in place a system in which there is a presumption that liabilities will transfer with assets. That is how it will operate unless there is a very particular set of circumstances. No legislation can legislate for the unforeseeable.

Stewart Stevenson: I have a small question about what Mr Mallon said about the decommissioning of marine assets. The phrase used was "residual liabilities". I do not recognise that phrase; I recognise only liabilities and

contingent liabilities. I presume that we are talking about those being contingent liabilities—in other words, there being no liability until a future contingency occurs—therefore they would not have to be in the numbers and provided for financially by the manager, although there would need to be reference to that in the notes to the accounts.

11:45

David Mallon: You are right that the liabilities are all either residual or contingent—they are all theoretical rather than actual liabilities. To clarify, "residual liability" is a phrase that has been used by the UK Government in the decommissioning schemes for offshore renewables, which—

Stewart Stevenson: Okay. My point is that it is not in the international financial reporting standard.

Claudia Beamish: I seek a brief clarification on the support for community ownership. Organisations such as Community Land Scotland have welcomed the inclusion of community organisations as potential asset managers. What will community organisations need to do to prove that they are capable of running a Crown Estate Scotland asset? What support will CES and others provide to them? What monitoring will be provided to ensure reassurance and to allow community organisations to be in control?

Roseanna Cunningham: First, we should remind ourselves that it is not ownership of the Crown estate that is being passed over, but management. I worry a little when a shorthand is used that makes it sound as if, somehow, ownership is involved in this.

I very much hope that communities will step forward and take over local assets because, as I said in my opening remarks, in the past, communities were most critical of how things were managed—they felt that things were not managed in their specific interests. Members will also be aware that pilot schemes will be launched, and we will follow their progress and how they work pretty closely. The experience of the pilots will inform some of the decision making on transfer and delegation.

We have in place the existing capacity to support communities at an early stage, in the same way that we support those who come forward with the intention to register an interest in community right to buy. If anyone has been involved with a community that has done that, they will know that an enormous amount of support from officials is available at a very early stage in the process to ensure that a community's application is in the best shape that it can be. We want to build that into the system for communities becoming asset managers, so that communities

that come forward with an idea can have an early conversation and get early support in how they should proceed. I think that I am right in saying that grants will be available to communities that want to come forward with an application, in order to help with their capacity. If I can find the specifics on that point, I will provide them. There will be financial support.

From my perspective in knowing about communities that have wanted to progress a right-to-buy application, the more important support is the support that communities get from officials from the outset to help them through the process. One of Crown Estate Scotland's jobs will be to be as facilitative as possible with communities that express an interest.

I am just being reminded that section 31 of the bill provides for grants for preparation for management changes.

Different kinds of support will be available for communities and it will be interesting to see how many step forward. Some communities, as opposed to local authorities, have expressed an interest, but not an enormous number. Perhaps publicity about the bill going through Parliament will mean that other communities begin to think about the issue.

Claudia Beamish: I do not want to sound too negative, but I need to ask what would happen if things went wrong with assets that had community managers. The same answer might apply to every other manager that takes on Crown Estate assets.

Roseanna Cunningham: We very much hope that things will not go wrong, although occasional hiccups are in the nature of things. Crown Estate Scotland and we as ministers will look closely first at defining wrongness. Our earlier conversations were about a community taking on something that can make money or being prepared to take on something on the off-chance that it might make money, which is in a slightly different category. In those circumstances, what is the wrong thing?

The nuclear option would be to take back management from an organisation. We would try not to be in that position, if possible, but we have provided for it if needs be. The bigger picture about financial viability and the Scottish consolidated fund will be the final red line that we must keep in mind.

John Scott: The cabinet secretary will be aware that the committee carried out a confidential survey of all Crown Estate Scotland (Interim Management) staff to seek their views on the bill. Staff expressed many fears in the survey, such as fear of fragmentation, and a number of people said that they believed that the bill would lead to their jobs being lost and made other comments that

were not very positive. What reassurance can the cabinet secretary give the current staff?

Roseanna Cunningham: Change always creates uncertainty and I do not expect Crown Estate staff to be excluded from that feeling. They know that the way in which they work will change. However, as we have discussed, the staff will have a continuing role for the foreseeable future. I have taken the time and trouble to visit them on a number of occasions, because I was conscious that the policy change could take place without reference to them at all—although that is not how we have proceeded. I very much hope that potential new managers will think about that aspect, as we have done.

The uncertainty is of the nature that arises whenever change is coming, regardless of what that change is. I suspect that the continued retention for national management of a significant part of what the Crown Estate does will mean that the change is far more minimal than staff might have feared at the outset.

Whatever the concerns about the fragmentation of management were, the experience so far has been that the number of bodies that are prepared to take on management and are asking about the transfer of management has not been as high as I expected. The attractiveness of the option for some organisations and local authorities remains to be seen. We could be many years down the line before the final verdict is passed on internal devolution of the Crown estate.

John Scott: I am sure that the staff will find that reassuring. Do you envisage any jobs being lost? Is a policy of no redundancies in place?

Roseanna Cunningham: We will ask Crown Estate Scotland to comply with the policy. It is not legally obliged to comply; it is one of the groups that can choose to comply. Most of the bodies that are not legally obliged to comply do comply. We will look at that.

It is obvious that I cannot foresee the future. It is important to remember that staff terms and conditions always need to be borne in mind and that contractual arrangements such as pension provisions absolutely have to be catered for.

I hope that the change will have as little impact on staff as it can. How things are managed will change, but reference has been made to the feeling that the management of smaller community facilities has not been as hands on as it might have been, which we hope that the internal devolution of management will change. I do not see that having a significant impact on the staff in Edinburgh.

John Scott: I hear what you say, and I am sure that you would seek to allay staff fears, but it

appears from what you have said that a preponderance of other experts will be invited to advise communities and local authorities on how to manage assets. What will be the role of those in Crown Estate Scotland who have hitherto managed those assets? Given that they will no longer deal with those assets, how will their jobs change?

Roseanna Cunningham: I know of no organisation anywhere in the country that does not have to deal with change at some stage. That applies to Crown Estate Scotland as it does to anywhere else. Perhaps the way in which management is done will change. The body will still produce a strategic plan, and significant parts of the Crown estate are likely to remain under national management.

To be honest, I do not foresee an enormous amount of change for the staff in the foreseeable future. Can I promise that there will be no change for any staff at any point? Of course I cannot, but I cannot say that about any organisation. In that sense, Crown Estate Scotland's position is no different from that of other organisations that are in the purview of my portfolio.

The Convener: We will move on. I remind members that we still have a lot of ground to cover.

Claudia Beamish: In parallel with the financial obligations, which we explored in considerable detail, there are the wider social, economic development and environmental duties on which sections 7 and 11 focus. The cabinet secretary will know that the committee has heard no outright opposition to the inclusion of the wider duties that those sections highlight, but some stakeholders have called for the duties to become mandatory or for the wording to be strengthened. Some have argued for the word "must", which is used in connection with the financial obligations, rather than the word "may" to be used. Should the wider duties be mandatory? How could they be strengthened?

Roseanna Cunningham: I gave a fairly reasonable explanation of why we chose to make the financial duty mandatory, because of the pretty significant impact. When we talk about a mandatory duty to maintain the value of an asset, it is also important to communicate to managers the fact that their fulfilment of that duty includes the promotion or improvement of the socioeconomic factors that section 7 lists. That provides a good reason for using the terminology "may" rather than "must". In many instances, such factors have to be borne in mind to maintain the value, which is a must.

The duty in section 7(1) is not to maximise value but to maintain value and, where possible,

improve it. I do not want there to be a false understanding that it is a duty to maximise value at the expense of everything else. That is clearly not what we have in mind, as is borne out by the language of the bill.

It is also important to see this legislation within the broader context of the principles of sustainable development. Crown Estate Scotland has been asked to look at that extra line and it is working with it effectively so far. We think that that will continue to be the case.

At the moment we do not feel that we need to make everything a "must" in the way that some have suggested. For the reasons that I have already given, we do not see the conflict that some people see. In order to maintain and improve the value of assets, some of those other things will have to be brought on board anyway.

12:00

Claudia Beamish: If that is the case, surely the use of the word "must" should be considered in relation to environmental duties, for example, as the Crown estate is a public interest.

Roseanna Cunningham: Any environmental duties that are imposed by statute will have to be complied with anyway; managers are not exempted from any of those formal duties.

Another of the issues that we need to take into consideration is that those factors might not be relevant to absolutely everything that a manager does. If we use the word "must", and a manager then has to take into consideration something that is not relevant to a particular decision, that becomes an exercise in futility. I do not see that particularly helping managers to make the decisions that they need to make.

In truth, the reason why communities will want to take on the management of the assets will be to maximise a range of benefits. The traditional criticism has been that that has not happened. We are not in a position to judge whether that is a fair criticism, but the precise reason why communities will want to take on the management is to maximise a range of benefits. I do not see those things as being in conflict.

Mark Ruskell: I return briefly to the points that you made in your opening statement about disbursing net revenues to communities. Would you like to add anything more about the process and the mechanism for doing that? For example, is it the intention that some of the financial benefits to communities will go through participatory budgeting, or could they go through council budgets? Are there any restrictions on that? Do you have any thoughts on how that should or should not be done?

Roseanna Cunningham: The point that I made in my previous remarks is that, however the distribution is done—whatever the calculation and the formula for that distribution will be—the money will not be hypothecated, because of the nature of the settlement that we have with local government.

However, the amounts of money that will be involved will be known. I anticipate that any managers—in this sense, we are talking mostly about local authorities—will want to account for how they use that money. How they choose to do that is a matter for them. At the moment, we are not thinking about mandating a mechanism by which a local authority makes its decisions about what it considers the best way to spend that money, but we expect the money to be spent for the betterment of coastal communities, however that might be defined.

Given the nature of the local government settlement, I do not think that it would be right for us to send the money to local authorities and attach a set of strings to it. Doing that would require a change in the way in which the relationship between the Government and local authorities works. However, the amounts of money that will be sent to local government will be known. I hope and expect that people will hold their local authorities to account on spending that money.

John Scott: I turn to the 9 per cent figure. Thank you for the revenue chart that you helpfully provided. My question is simple: should Crown estate asset managers be able to retain and invest more than 9 per cent of the revenue that they earn? How do you see that story unfolding? You have said that you expect to introduce flexibility to the 9 per cent figure in the bill.

Roseanna Cunningham: Yes. That relates to the flat rate that comes with devolution. The flat rate is applied by the UK Government to the Crown estate in the UK as a whole, and it will be applied to what will be the residual England and Wales Crown estate.

Our view is that we should start with 9 per cent, simply because that is what is used now, but we will keep the situation under review. We will consider whether 9 per cent should apply across the board or whether there might be occasions on which we should allow managers, depending on the area and the asset, to retain more than 9 per cent, because more management might be required for some assets than for others. However, that means that the likelihood would be that other managers would get to retain less than 9 per cent. It is not just about retaining more, because in some areas the management function might not be as great and, therefore, the figure might be less than 9 per cent. All that we are doing is trying to retain flexibility so that we are not tied

across the board to the 9 per cent figure, which might not apply in every case.

That approach will enable us to respond to the different kinds of management that there are. I refer back to our earlier conversation: a community group that wants to step up might think, “That asset is not generating what it could for the community. We think that we can do better, and we want to set out a plan that does that.” In such circumstances, the Government might take the view that the community group would be able to retain a greater percentage because it would be putting more effort into the management compared with a different group that might just want something to take over. It is about allowing ourselves flexibility.

We do not have any immediate plans on the issue; I have nothing in mind at the moment. The 9 per cent figure is what we will inherit, and it would be a big thing to axe when we might be able to deal with the issue more flexibly.

John Scott: I appreciate the need for flexibility. I understand perfectly well that the figure will depend on good years, the income that is available to managers, the need to return money to the Scottish consolidated fund and the potential to invest more in the Scottish Crown estate.

My second question is, if the Scottish Crown estate becomes fragmented, and if a higher proportion of asset managers are able to retain a higher proportion of their revenues, rather than the Crown estate managers retaining them, what impact will that have on the ability of Crown Estate Scotland to invest in, for example, farms in the rural estate?

Roseanna Cunningham: That is a specific example of why we want to retain cross-subsidy. As unpopular as it might make a minister to step in and tell one set of managers that they will have to transfer money to another set of managers, that is nevertheless how we wish to be able to proceed, because otherwise the estate as a whole would begin to be in difficulty. The cross-subsidy part of the bill has been well understood. There has been an active stakeholder advisory group all the way through the process and we have never hidden that part of the conversation from them, so people are well aware that that is a possibility.

Finlay Carson: Bearing in mind that we have already discussed the cross-subsidies, how will the potential impact on other assets be taken into account when you are making the initial decision to transfer or delegate the management of assets? If you have to make a decision on transferring assets, what part will those considerations play?

Roseanna Cunningham: Do you mean what part they will play if I have to make a decision

about a community taking on responsibility for management?

Finlay Carson: Yes.

Roseanna Cunningham: I was using the word “transfer” in a different sense.

Finlay Carson: Cross-subsidy is one way in which we can support the non-profit-making parts of the estate; will you assess the potential financial impacts prior to transferring or not transferring the management of an asset?

Roseanna Cunningham: Every single one of the applications for taking control of management of an asset will have to be looked at carefully on its merits. There will be a lot of factors to be considered, and that may be one that we will look at. As discussed with John Scott, it may be the case that some organisations, whether they are community organisations or not, will feel that they can make a far better fist of running an asset than has been the case. If so, they can turn an asset into one that does not need transfers of money in but which might be in a happier position in a few years’ time.

That is a conversation that we would need to have with the organisation at the time of application, because we expect people who come forward to consider taking on the management of assets to have a clear plan and proposals. It is not simply a case of signing a brief form and getting the management transferred; it is too important for that. That will be part of the conversation. If the asset is one that the prospective managers do not realise is not actually making money, they will be made aware of that as part of the application.

My officials are reminding me that managers, or prospective managers, will have to show three-year plans, so when we are talking to people about taking over management, they need to be thinking about it not just on day 1, or even six months down the line, but over the whole period. All of that will be part and parcel of the conversation. I anticipate that it will sometimes happen that a group comes forward and then decides that there is not as much potential in the proposition as it thought there was. I hope that we will also get communities that come forward and say, “Look, we want to do this, because we think it could be better run, and here’s why, and here’s our plan for how it can be better run.” That is a conversation that I hope that Crown Estate Scotland will be having with more people, rather than fewer people, and it will turn assets into income-generating assets, rather than those that do not generate income. That does not necessarily apply to some of the bigger assets, but it might in future.

Finlay Carson: Has any thought being given to the idea that there may be parts of the estate that

you do not want to allow communities to take over because they are key to the overall performance of the estate and its ability to support those parts of the estate that are not so viable?

12:15

Roseanna Cunningham: We have not looked at it in quite those terms. We have been thinking about national strategic priorities and the pressure from the tenant farmers in the four tenanted estates. Rather than considering the issue from the perspective of whether an asset is income generating or not, we have been thinking about the bigger picture and considering what is a more appropriate approach. It is perhaps understandable that things such as the big telecoms and renewables should not get chopped up, because it would be harder to see how they would work if they were chopped up and they are also some of the really big income-generating sectors.

We must not lose sight of the fact that although we might want to focus on smaller assets that are not such big income generators, there are some big income generators in the mix. That is why it was important to keep the cross-subsidy idea. There will also be a strategic management plan to give a national perspective. We are not losing sight of the bigger picture in the individual conversations that we are having.

At this stage, I do not have a clear idea whether the Crown Estate could point to every single asset and say with certainty whether it was income generating. That information will probably emerge over the next year or two. I make a shrewd guess that it will tend to be the smaller assets, which are more localised, rather than the bigger, strategic ones that are considered. However, that is a guess at this stage.

Angus MacDonald (Falkirk East) (SNP): Historically, the coastal communities fund has been tied at UK level to revenues generated by the Crown estate and has been delivered by the Big Lottery Fund. Even in my constituency in the industrial heartland of central Scotland, some groups have managed to tap into the coastal communities fund. What are the plans for the fund from now on?

Roseanna Cunningham: The short answer is that we are considering the best way forward. The member is correct. We inherited the scheme from the United Kingdom Government along with the various financial pressures created by the fiscal framework and the reduction in the Scottish block grant, which is also linked to the devolution of the Crown estate.

The coastal communities fund is currently competitive and there is no guarantee of success.

There are many coastal parts of Scotland that have never received coastal communities fund funding. Traditionally, it has been administered by the Big Lottery Fund. We are looking at in the context of the changes that are being made in the Crown Estate. We are absolutely committed to following current projects through to completion, but no final decision has been made about the coastal communities fund, because of its link to the formula for the Crown Estate funding.

Given the different set of funding circumstances at a national level and given that coastal communities will now receive moneys that are directly disbursed by the Crown Estate, we need to consider whether, in Scotland, the coastal communities fund should be continued. No final decisions have been made because we need to work through several issues. I remind everyone that the commitment to all coastal local authorities getting money will mean that money will go to several local authorities where communities have never been given any money from the coastal communities fund. We are now in a different set of financial circumstances.

Angus MacDonald: I understand that there is a suggestion that the funding formula will be revised from 50 to 33 per cent of the revenues from marine activities—

Roseanna Cunningham: That is the Treasury—

Angus MacDonald: Yes, the UK Government.

Roseanna Cunningham: Yes. I am not sure whether the officials know more about that and what impact it might have on us, if any. I think that it is about the coastal communities fund.

David Mallon: That is correct. It is our understanding that the Treasury recently reduced the amount of money that it makes available under the coastal communities fund from an equivalent of 50 per cent of Crown Estate marine income to 33 per cent of marine income. The fiscal framework agreement on the devolution of the coastal communities fund was based on expenditure in the year prior to the transfer, so all that should have worked through the system.

Angus MacDonald: Thank you.

During our consultation, we received a submission from Grangemouth yacht club, in my constituency, which told us:

“the only regular contact we have with”

the Crown Estate

“is an annual demand for £640.”

As a matter of principle, the Crown Estate and other asset managers have to provide a service for what they charge their tenants. Is there scope

for smaller community organisations such as Grangemouth yacht club to be exempt from charges?

Roseanna Cunningham: Well, the rent of a property is the service. The club is paying rent for something; it is not paying rent for nothing. That is the short answer. I think that the club will have the exclusive use of the mooring, so that is what the rent is for.

On the wider point about exempting smaller community organisations, we must bear in mind the duty in section 7 to

“maintain and seek to enhance—

(a) the value of the assets, and

(b) the income arising from them.”

Managers are empowered to do what is considered appropriate in that regard. There will be no blanket exemptions; exemption will be very much a matter for managers locally. A different set of managers might decide to exempt an organisation if they felt that there was a bigger picture that they wanted to pursue. I am sceptical as to whether that is likely in the shorter term, to be frank, given the duties on managers.

Angus MacDonald: We cannot blame the yacht club for trying. [*Laughter.*]

Roseanna Cunningham: It can ask, but whether it is successful is another matter.

Donald Cameron: I refer to my entry in the register of members' interests; I am a landowner in the Highlands.

I have two questions. The first is about cross-subsidy, which we have discussed a little. We talked about giving Crown Estate Scotland financial flexibility. Forgive my ignorance: is the Crown Estate currently able to, for example, borrow or enter into joint ventures or other arrangements that would give it financial flexibility, and does the bill change the current position?

David Mallon: At present, the Scottish ministers can give loans to the Scottish Crown Estate, and the bill extends that to include other managers. The Crown Estate Act 1961 provided for a limited number of situations in which a manager could enter into borrowing. It could happen only in a very narrow set of circumstances, and Crown Estate Scotland—in its nascent form—viewed that as a constraint on viability, so the Scottish ministers decided to extend the facility to provide loans. Beyond that, there is no intention that wider loans be taken out, because of the risk that that could pose to the monarch's ultimate ownership of the estate.

The bill was specifically designed not to preclude joint ventures from being entered into.

We continue to discuss that with Crown Estate Scotland on an operational basis to see whether there is a need for that.

Donald Cameron: That is very helpful. I want to move on to delegation and the transfer of management responsibilities. It is right that sections 3 to 5 of the bill set out the processes for transfer and delegation. Is the panel satisfied that those processes will be effective? Are they transparent, and do they allow proper parliamentary scrutiny? Will they give asset managers clear lines of accountability that they can work to? Is there an effective dispute resolution process?

Roseanna Cunningham: Yes. Broadly, the bill's provisions are appropriate and allow for what has been raised. Transfers will be made by Scottish statutory instruments, which will be subject to parliamentary scrutiny, and the terms and conditions of the transfer will be set out in the SSI. Details will therefore be available. Similar provisions will be made in respect of delegation, but it will not be subject to a parliamentary procedure because, in effect, Crown Estate Scotland will retain aspects of management that have not been delegated to another manager. Our position is that that part of the bill does exactly what it should do.

It is being flagged up to me that there will be annual reporting and that dispute resolution will be part of the SSI or the delegation agreement. That will be built into what will be seen up front when the management is being transferred.

Mark Ruskell: Do you see a potential conflict of interest for local authorities given their function as planning authorities in relation to aquaculture and the fact that they will be net receivers of revenues under the bill? Do you see a similar conflict of interest in relation to harbour authorities, which arguably have less stringent democratically accountable governance processes in some cases, compared with those of councils?

Roseanna Cunningham: Our view is that councils already have to make a huge range of decisions across a number of areas in which it could objectively be argued that they have conflicts of interest. Councils' planning authorities have to make the planning decisions when it comes to building schools. Handling conflicts of interest is already part and parcel of what local authorities have to do. To my knowledge, they already have pretty rigorous governance arrangements to manage that, and I do not see why things would be any different under the bill. I cannot imagine that any council would intentionally try to mismanage.

I do not want to be drawn down the road of talking specifically about aquaculture, because

what I am saying could apply to almost anything. Councils will try to ensure that their management is as well done as the management of any aspect of their duties. Councils in particular are well versed in managing conflicts of interest.

If a harbour authority becomes a manager, it will need to comply with the duties that are legislated for in areas such as reporting. It will need to bring itself into compliance in those areas. The situation is manageable, because these things have had to be managed for decades. Single local authorities do that work regularly, and I do not imagine that Crown estate assets will be managed any differently from that.

12:30

Mark Ruskell: Will there be a tension, particularly with harbour authorities? For example, there is a commercial incentive to develop ship-to-ship oil transfers, but a harbour authority also has a regulatory function to discharge.

Roseanna Cunningham: Any manager that takes on the management of an asset, regardless of what it is, will need to comply with all the statutory requirements that relate to that area of endeavour. Perhaps I am misunderstanding the issue that you are trying to raise, but all those matters will be part and parcel of the management.

The Crown Estate has to abide by the requirements, which it does. We are not bringing in anything new by asking devolved managers to also comply with any legislative authorities. The explanatory notes state:

"Section 18 requires managers to exercise their functions in a way that is transparent and accountable".

Any harbour authority or other manager that makes a decision—for whatever reason—will need to be clear about why it is doing so. Managers will also need to comply with a range of other statutory obligations that are required in any area of endeavour.

Mark Ruskell: I was just referring to the potential conflict in that harbour authorities have their own regulatory functions.

Roseanna Cunningham: I do not know what potential conflict you have in mind. If a harbour authority wants to take over the management of the harbour, it will need to manage the harbour in a way that delivers all the objectives that we have set out. It will do that—

Mark Ruskell: What will happen in relation to the appropriate assessment under the habitats directive, for example?

Roseanna Cunningham: Harbour authorities will still have to comply with that directive, which

will still be in place. None of the regulations will fly off because an authority has become a manager of a Crown Estate property.

David Mallon: As I understand it, harbour authorities already have functions that relate to ship-to-ship oil transfers. The Crown Estate's functions relate to sea bed ownership—primarily maintenance dredging, other forms of dredging for navigational purposes and the dumping of spoil that has been collected through dredging. The bill's provisions are about the control of those activities. As the cabinet secretary says, those activities would have to be undertaken by any manager because of the wider regulations that exist.

John Scott: The Law Society of Scotland has expressed concerns about the drafting of section 6, stating:

"We do not consider that the meaning of 'relates to a community' where it appears in section 6(1)(a) is clear."

What is the definition of "relates to a community" in that section?

Furthermore, the requirements that are set out in section 6(2) do not appear to be inclusive—particularly those in paragraphs (c) and (d). The Law Society considers that there would be

"merit in amending the requirements for a community organisation to fall within the terms of the Bill."

Does the Scottish Government agree with the Law Society that sections 6(2)(c) and 6(2)(d) could be amended to be more inclusive?

Roseanna Cunningham: The provisions in section 6 on community organisations are similar to those in the Community Empowerment (Scotland) Act 2015. In my view, that means that they are sufficiently inclusive. We have to recognise that evidence of community control is important, but given that, in effect, the definition has been imported from existing legislation, we believe that it is sufficiently inclusive. I am not sure whether the Law Society was aware of that, but that is where the definition has come from.

John Scott: Section 6(2)(f) mentions "promotion of a benefit for that community".

The Law Society says:

"We note that the concept of public benefit is already recognised in the law, for example in section 8 of the Charities and Trustee Investment (Scotland) Act 2005. It would be helpful if there was some consistency between these statutes particularly when section 17 of the Bill refers to the 'public benefit' provisions under the 2005 Act."

On the one hand, we have

"promotion of a benefit for that community"

and on the other hand we have "public benefit". Should there be more consistency around the

terminology of public benefits, as the Law Society suggests?

Roseanna Cunningham: Again, we have replicated the definitions in the Community Empowerment (Scotland) Act 2015. In our view, that provides sufficient consistency. I have not seen the specific Law Society evidence to which you refer and I do not know whether the Law Society was conscious of that. I cannot think of a better example of consistency than to use definitions that are used in other legislation.

John Scott: Perhaps that is something that you will reflect on. Thank you for your answers.

Finlay Carson: Some of the evidence that the committee has heard has argued for the strengthening of protection against the sale of the sea bed. Can the bill be strengthened to prohibit sales of the sea bed, and should it be? Do you agree with COSLA, for example, that there are circumstances in which the sea bed might be sold?

Roseanna Cunningham: We are not convinced by the COSLA position. This Government's view is that the presumption against selling the sea bed should be maintained. We have talked a lot about cross-subsidy. The fact that a bit of sea bed is a loss-making asset is not a reason to sell it, because there is the capacity to cross-subsidise. Given that we are maintaining the element of cross-subsidy, we think that the presumption against selling the sea bed should remain. I have no doubt that the debate will continue, but at this stage we are not convinced that the COSLA approach is correct.

The Convener: I thank the cabinet secretary and her officials for coming to the committee. It has been a long morning, but we have covered a lot of ground.

At the committee's next meeting, on 1 May, we will consider subordinate legislation relating to the Loch Carron marine conservation order, which we considered last year. The committee will also consider draft correspondence on the national performance framework, consider its approach to the gender diversity of witness panels and review its work programme.

As agreed earlier, the committee will now move into private session.

12:39

Meeting continued in private until 13:00.

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