



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 4 June 2014

Session 4

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**Wednesday 4 June 2014**

**CONTENTS**

<b>LAND REFORM REVIEW GROUP FINAL REPORT.....</b>	<b>Col. 3719</b>
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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE  
17<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

Claudia Beamish (South Scotland) (Lab)  
\*Nigel Don (Angus North and Mearns) (SNP)  
\*Alex Fergusson (Galloway and West Dumfries) (Con)  
\*Cara Hilton (Dunfermline) (Lab)  
\*Jim Hume (South Scotland) (LD)  
\*Angus MacDonald (Falkirk East) (SNP)  
\*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Claire Baker (Mid Scotland and Fife) (Lab) (Committee Substitute)  
Patrick Krause (Scottish Crofting Federation)  
Alan Laidlaw (Crown Estate)  
Sarah-Jane Laing (Scottish Land & Estates)  
Derek Logie (Rural Housing Scotland)  
Dr Calum Macleod  
Angus McCall (Scottish Tenant Farmers Association)  
Willie McGhee (Forest Policy Group)  
Nigel Miller (National Farmers Union Scotland)  
Peter Peacock (Community Land Scotland)  
Andy Wightman

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 4 June 2014*

[The Convener *opened the meeting at 10:09*]

### Land Reform Review Group Final Report

**The Convener (Rob Gibson):** Good morning, everyone, and welcome to the 17th meeting this year of the Rural Affairs, Climate Change and Environment Committee. I remind all those present to turn off their mobile phones and so on, although the use of tablets to help with evidence giving—and for no other purpose—is fair enough. Some of the clerks and some members of the committee will be using tablets. We have received apologies from Claudia Beamish, and I welcome Claire Baker as her substitute.

Agenda item 1 is an evidence-taking session with stakeholders on the land reform review group's final report. I welcome all our witnesses to the meeting. In a moment, I will ask everyone to introduce themselves—but not to make a statement.

I should also point out that the sound system is controlled by the sound operator, so you do not need to switch on or turn off your microphones. If you wish to respond, you should attract our attention and we will put you on a list. We will ask a range of questions to allow each of you to talk about your speciality, but it will help us if you do not seek to answer every question that committee members ask.

The session will provide people with an opportunity to express an early view on what is a hugely substantial report. What is said today will not be the final word on the matter in this committee or anywhere else; it will simply be a very early view. Next week, the minister will give us his initial thoughts on the report.

We will start the introductions with Cara Hilton.

**Cara Hilton (Dunfermline) (Lab):** I am the MSP for Dunfermline.

**Peter Peacock (Community Land Scotland):** I am representing Community Land Scotland.

**Sarah-Jane Laing (Scottish Land & Estates):** I am from Scottish Land & Estates.

**Claire Baker (Mid Scotland and Fife) (Lab):** I am an MSP for Mid Scotland and Fife.

**Alan Laidlaw (Crown Estate):** I am from the Crown Estate.

**Andy Wightman:** I am a writer and researcher.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** I am the MSP for Skye, Lochaber and Badenoch.

**Dr Calum Macleod:** I am a rural development consultant.

**Derek Logie (Rural Housing Scotland):** I am from Rural Housing Scotland.

**Nigel Don (Angus North and Mearns) (SNP):** I am the MSP for Angus North and Mearns.

**Willie McGhee (Forest Policy Group):** I am from the forest policy group.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I am the MSP for Galloway and West Dumfries.

**Patrick Krause (Scottish Crofting Federation):** I am from the Scottish Crofting Federation.

**Jim Hume (South Scotland) (LD):** I am an MSP for South Scotland.

**Nigel Miller (National Farmers Union Scotland):** I am from NFU Scotland.

**Angus MacDonald (Falkirk East) (SNP):** I am the MSP for Falkirk East.

**Angus McCall (Scottish Tenant Farmers Association):** I am from the Scottish Tenant Farmers Association.

**Graeme Dey (Angus South) (SNP):** I am the MSP for Angus South.

**The Convener:** As well as being the committee's convener, I am the MSP for Caithness, Sutherland and Ross.

I will kick off with a question about the consultation process, which as we know had three phases. The important thing is the final phase, but there are a number of other issues that members might like to explore. For a start, some concern has been expressed about the fact that, although stakeholders were consulted in the earlier phases, there was less direct consultation during the final phase. As stakeholders, how do you feel about that? The land reform review group has given us a list of the bodies that were involved in discussions in the final phase. Clearly, representative groups were more likely to have been involved than individual stakeholders.

Does anyone want to comment on that?

**Nigel Miller:** The final report is quite a scholarly document and covers a huge spectrum of issues. Some of them definitely do not impact directly on

our members, but there will be trickle-down impacts on farmers, both owner-occupiers and tenants, and some of the report's implications for land use will affect agriculture. I suppose that we felt that some direct consultation with NFU Scotland at an early stage would have been helpful. We have never had any direct contact with the land reform review group, even though we asked for it, and we have slight concerns about the fact that we have reached this stage without it.

**Sarah-Jane Laing:** We were criticised in the first phase for having too much stakeholder engagement with the land reform review group but, following the evidence session in June involving Alison Elliot and Robin Callander, we believed that there would be further consultation during phase 2, not just with stakeholder groups but with individuals who had provided evidence as part of phase 1. Many of us around the table are involved in other stakeholder groups, such as the private rented sector review group that is mentioned in the report and of which I am a member. To my knowledge, the land reform review group did not consult those groups.

10:15

**The Convener:** Does anybody else have a point to make on that?

**Peter Peacock:** I take a slightly contrary view. In the first phase of the evidence gathering, we put in a written submission, as did many others, and we had the opportunity of a meeting. When, at the beginning of the second phase, I inquired how we would be consulted, I was told that we would not be, that we had made our written submission and that the group would come back to us for points of clarification if it so wanted, which is what it did.

Our organisation developed some ideas that were included in our submission in the first phase, and we made the documents available online, so they were available to the land reform review group. The second phase met our expectations entirely.

We were always aware that whatever we published would be subject to consultation. Inevitably, if we published something that resulted in proposals, both this committee and the Government would consult on them. We have no concerns at all about the nature of the process.

**The Convener:** I should make it clear that we were told that at phase 2 the land reform review group met the agricultural holdings legislation review group, among others. That was made clear in a late piece of evidence that was submitted as a result of a request that we made last week.

**Alex Fergusson:** I must put on record my concern that many of the people who have given

us written evidence since last week—and whom I commend for doing so in such a short period—have referred to the fact that they were not consulted on the report's preparation.

I highlight in particular the evidence from the Scottish moorland group, which has made quite a lot of play of the fact that it was not consulted on the preparation of the report. I cannot help but believe that, given the impact of some of the report's recommendations on that group's area of interest, the fact that it was not consulted is a serious weakness.

If I may, I want to ask you a question, convener. I note that we have received written evidence from Andrew BruceWootton. When I asked Dr Alison Elliot last week why one of the panel of experts had seen fit to resign in April, she said, quite understandably, that it was a private matter. In his written evidence, Andrew BruceWootton—the expert to whom I was referring—says that he made a statement to the group when he believed that he had to resign. He also says:

"I believe my statement on this subject to the Group is available to your Committee but I can produce it for you directly if that is competent."

Can we ask for a copy of that statement? We should know why an adviser with considerable expertise, particularly in landlord-tenant relationships, believed that he had to resign from the group.

**The Convener:** We can certainly ask for that. Andrew BruceWootton was one of the land reform group's 10 advisers, and I guess that that is not a bad attrition rate for such a complex area. We will find out what Mr BruceWootton said and no doubt add it to our store of knowledge.

Are there any other points on the consultation process?

**Patrick Krause:** We submitted our written evidence what seems like quite a long time ago. In the second phase of the consultation, the land reform review group came back to us and asked for clarification on a particular point. We were quite satisfied with the consultation process and felt that the Scottish Crofting Federation was involved in it. All the things that we brought up have been addressed in the report, at least in part.

**Andy Wightman:** The report is very substantial and covers a vast number of areas, many of which do not even fall within the remit of this committee, and the amount of work that has gone into it has taken a considerable amount of time. I am very aware that those who find the report difficult to deal with—mainly the landed interest—are attempting to undermine its credibility by suggesting that the group did not speak to people whom it should have spoken to and did not take evidence that it should have taken. An adviser has

now come out and revealed certain things about what he believes, but I note that none of the other advisers has spoken publicly about it.

One should be very aware of the report's big implications for the future of Scotland and that people are doing what they can to defend their interests, partly by trying to undermine the report's credibility.

**The Convener:** I think that you are saying what I said earlier, but in a slightly different way.

**Claire Baker:** The report is wide ranging, and I have confidence in the consultation process and believe that it engaged thoroughly with people during the first phase. However, we must be mindful that the group was working to pretty tight timescales. The Government expected a wide-ranging report on a pretty short timescale, and people should bear that in mind when they think about how consultation has been conducted.

**The Convener:** I think that we are talking about a situation in which, as Peter Peacock has just said, any proposals will be consulted on and consulted on.

**Sarah-Jane Laing:** I want to state for the record that the adviser who has been mentioned, Andrew BruceWootton, left the group before the report was published and before he had seen it. His leaving the group was in no way an attempt to undermine the report.

Andy Wightman refers to the landed interest. Many people around this table have an interest in land in Scotland. Our organisation is certainly not seeking to undermine either the report or the land reform review process, with which we have engaged enthusiastically.

**The Convener:** Let us get past this initial artillery barrage and get down to considering certain points.

**Angus McCall:** Although we submitted evidence in the first phase of the process, we felt that no great account was taken of it. Tenancy matters were certainly shovelled off to one side. We were gratified to find that, in the second phase, the group was taking far greater account of tenancy matters and was doing a lot of research on the area, and it came back to us with points of clarification. We were quite satisfied with the consultation process.

**The Convener:** Thank you. We will move on swiftly to the ownership of land, which should be a useful discussion. Angus MacDonald will lead on that.

**Angus MacDonald:** Good morning. As all the panel members will be aware, the review group recommends that

“the Scottish Government should make it incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland, to improve traceability and accountability in the public interest”.

Perhaps Andy Wightman will respond to that point with regard to the Land Registration etc (Scotland) Bill, which went through Parliament in early 2012. If I recall correctly, the suggestion was ruled out by the Scottish Government at that time, so I am glad to see that it is back on the agenda. Can the witnesses tell us whether it is likely to be the most effective way to improve traceability and accountability?

**Andy Wightman:** I have here the written evidence that I submitted in January 2012. Back then, I recommended that it be

“incompetent to register title to land in Scotland's Land Register in any legal entity not registered in a member state of the EU.”

I made that recommendation after consulting some very senior people in academic law, and some people in London who had raised concerns about the use of property in Britain to launder proceeds of criminal activity. The issue had been raised in a quinquennial review of the Land Registry in England by Andrew Edwards, and it must also be read in the context of the recent European Council decision to set up registers of beneficial owners of companies in order to tackle tax fraud and criminal money-laundering.

I am aware that Jim Hume discussed the issue of legal entities last week. I am clear that, in the argument made in the recommendation, “legal entity” means “legal person”; it does not mean “natural person”. That was certainly never the aim of my recommendation during consideration of the Land Registration etc (Scotland) Bill in 2012. If an American citizen wants to own land, a house or a shop in Scotland, they are perfectly free to register a title in their own name. That is not a problem at all.

The key issue is to introduce transparency and accountability. I am now dealing with many cases where the owners are in Grand Cayman, Jersey and such places, and you can go round in circles getting nowhere trying to find out who actually owns assets. Bringing the register onshore into the EU brings it within the scope of EU company law and ensures accountability, because under EU law in all member states there are open registers where you can see who is responsible for those companies.

**Jim Hume:** Andy Wightman named me and mentioned an issue that I explored and pursued last week with the members of the land reform review group of whether somebody from outwith the EU who wanted a building plot could acquire one. They were quite clear that their

recommendation would apply to building plots too. There seems to be a bit of confusion there, but the review group has recommended that non-Europeans not be allowed to own even a building plot. That would obviously have repercussions if any of us wanted to go off to Australia in our retirement. What Mr Wightman has suggested is slightly different from what the review group told me on the record.

**Dr Macleod:** I could sympathise with Mr Hume if that were to be the issue with individual building plots, as it would not be a terribly desirable situation, but I think that Andy Wightman has made a crucial point about defining what a legal entity is in that context. If we are talking about non-individuals, that clearly changes the dynamic and the point of that particular recommendation. It is very much in the spirit of accountability and transparency in relation to land ownership in Scotland, which everybody around the table will acknowledge will be significant in taking forward aspects of the land reform process.

**Peter Peacock:** That section of the report struck me as being first and foremost about transparency, as Calum Macleod has just made clear, and the point is that accountability follows transparency. It also fits in a much wider international context, which includes the European Union and more widely the G7, of international money movements and people hiding assets for aggressive tax avoidance reasons. The recommendations are designed to get into all that and to suggest that it must be reasonable in a Scottish context for people who are affected by the decisions of landowners to know who those landowners are. I do not see the review group's report as any more than a sensible set of recommendations for bringing about greater transparency. All sorts of detail will need to be worked out, but the key thing is to move on transparency, and the register and the offshoring that takes place are both important dimensions of that.

**Alex Fergusson:** I totally agree and have absolutely no difficulty at all with having a far greater degree of transparency and openness about who owns land in Scotland. The practice of hiding assets in offshore accounts and through companies is abhorrent and it is absolutely right that that they should be registered, but the issue highlights something that worries me about several aspects of the report, which is that a proposal has been put in black and white without being fully thought through. I accept that things require further consultation, and I hope that the consultation will be a lot more thorough than some of the thinking that has led to the proposals in the report.

**Dave Thompson:** It is the job of the committee to take things further. The report takes a comprehensive look at issues that need to be dealt with and makes recommendations, but there is plenty of consultation to come before anybody makes any final decisions. The members of the land reform review group themselves make it clear that they do not see themselves as experts, but they have looked at a big subject and come up with general directions that they think we should follow, so it is now up to us, and ultimately the Scottish Government, to take things forward.

On the registration of land, I would like to move away slightly from the legal entity issue. Registration is fundamental, because without knowing who owns the land, an awful lot of the recommendations cannot be followed up. The report says that public land should be fully registered in five years and all land in 10 years. I would like to know whether members of the panel think that that is quick enough. Should we be looking at a shorter timescale or at putting additional resources into Registers of Scotland, if necessary?

When it comes to pulling together the information that would be required for registration, I am sure that a lot of architects and quantity surveyors who suffered during the recent recession might be looking for work. Are the timescales of five years and 10 years right? If not, are they too long or too short? If you do not think that they are right, what timescales for registration would be realistic?

10:30

**Alan Laidlaw:** On transparency, I agree that knowledge about who owns what is very important. For example, a significant part of the role that we play in Scotland is to inform the debate regarding our foreshore interests. We own approximately half of the foreshore and more than once every day our office is contacted by someone who asks, "Do you own this piece?" We are able to clarify whether we do to assist exactly the sort of investigations that Andy Wightman mentioned and for the reasons that Dave Thompson outlined.

We have been working on the process for the past couple of years, since the introduction of the Land Registration etc (Scotland) Bill. We have had long discussions with Registers of Scotland. We note the minister's position on the respective timescales of five and 10 years. We have already written to him to say that we support his view and have spoken to the keeper of the Registers of Scotland about working to those timescales, subject to the resources being available.



To answer Dave Thompson's next question about appropriateness, it is a question of resource and time. This is not a simple matter; it takes time. We have experience of working with the Land Registry down south. Resource has to be available on both sides of the equation to ensure that the work is done properly and accurately. From our point of view, we are committed to delivering full registration of our assets within the timeframe that has been outlined, and I hope that we will be able to do so sooner if the resources are available.

**The Convener:** Is there a willingness, Sarah-Jane Laing, to get involved in the process?

**Sarah-Jane Laing:** We are already involved, convener. You need only look at the work that not just ourselves but our members have done in the past couple of years. Buccleuch Estates has dedicated staff who are working with Registers of Scotland as part of a three-year project to ensure that the land of Buccleuch Estates and all the parcels that have been sold are mapped. The hardest part is mapping the parcels that have been sold rather than mapping the outline of the estate. That work has been going on for some years.

We have also had discussions with the keeper about holding workshops. As Alan Laidlaw says, there are two parts to the process. There is Registers of Scotland's work and there is the work that has to be done by the estates and other landowners. Some landowners think that it is a bigger job than it is. With Registers of Scotland, we have committed to hold workshops to get the work done as cost-effectively and as timeously as we can. To answer Dave Thompson's question, the 10-year target is ambitious and I think that further resources will be required if it is to be met.

**Graeme Dey:** I do not want to put you on the spot, but if you have already done the background work and the wheels are in motion, why is 10 years an ambitious target?

**Sarah-Jane Laing:** The keeper and Buccleuch Estates have agreed that the process would take three years for Buccleuch Estates alone. In that context, 10 years for everything else seems ambitious, because we are being told that the large estates are easier to map than some of the small parcels. If we are talking about complete coverage within 10 years, we are talking about mapping all the hundreds of thousands or tens of thousands of units of land in the whole of Scotland.

**Patrick Krause:** As you know, the crofters are in the position that they are having to map their crofts. We pushed for there to be support for community mapping, because we believe that that is the only way to expedite the mapping of crofts.

In answer to Dave Thompson's question about whether it is possible to complete the registration work within five or 10 years, I do not think that it is unless a concerted effort is made and we put resources into helping communities to map their assets as groups. Using the trigger mechanism that is in place now to catch individuals and to get them to map their crofts individually creates more problems than it solves. I would push for community mapping for all the land that is owned.

I add that crofters are paying for the registration of their crofts. If we are talking about registering all the land in Scotland, in fairness, everyone should pay for their registration, given that the crofters have to pay.

**Willie McGhee:** First, I apologise for my persistent coughing.

My point relates to a theme that the forest policy group is particularly interested in: how communities and individuals can access areas of land on the national forest estate. I am talking only about the Forestry Commission here.

We have been in dialogue with the Forestry Commission about lotting, which is the breaking up of disposals when they come on the market. It is clear from early discussions with the commission that it faces a real challenge. None of its land is on the register at all, and many aspects of getting on the register are tremendously complicated. I think that Mr Thompson mentioned that five years is the timescale for getting all public land on the register. Without a shadow of a doubt, resources would require to be applied to get the job done in five years.

**The Convener:** What do you think about the suggestion whereby the Forestry Commission sells off some plots for affordable houses and uses the income from that to register its land?

**Willie McGhee:** Absolutely.

**The Convener:** Could that mechanism be used to fund such things?

**Willie McGhee:** I do not know about the flexibilities and the mechanisms for money going in and out of the commission, but we have been pushing it hard over recent forest disposals. We would like the commission to have two or three trials. It seems to be very keen, but it brings up limitations involving the legal work that it has to do for registration.

**Nigel Don:** I will pick up on something that Patrick Krause said. I want to find out from the panellists whether the issue is one of finding lawyers who can write down the right words, or whether it is actually about mapping. If it really is about mapping, we have aerial technology that surely gives us a detailed and sufficiently accurate map of the whole of Scotland.

On Patrick Krause's point, surely we do not map an individual patch of land west of Brechin, for instance; we map an entire estate. We just have to agree where the lines are. Is it that simple?

**The Convener:** Fair enough—people can comment on that point—but first we will hear from Andy Wightman.

**Andy Wightman:** As someone who has been trying for 30 years to find out who owns Scotland, I view what is proposed as a welcome move. When the Land Registration etc (Scotland) Bill was being considered, a suggestion was made about having targets every five years, but that was rejected. Now, we have a very ambitious target.

It is important to recognise that Registers of Scotland holds legal information on who owns almost all of Scotland. That may not all be on the land register, but it will be in the register of sasines. There is a very small amount of information that is not even in the register of sasines, because the properties concerned date back prior to 1617. For example, the University of St Andrews does not have a recorded title.

I do not think that it is a particular priority to get the land register complete in 10 years. There are big risks in that; it is a very ambitious task. I have direct experience of registrations that have involved people's houses being taken in when they should not have been taken in.

What does land registration do? The keeper is giving a state-indemnified title. In the case of the register of sasines, on the other hand, all that the keeper is doing is keeping some documents. It is a case of buyer beware when it comes to whether people know what they are buying and selling.

I would not want to rush the process. I have been in discussion with members of staff at Registers of Scotland, and they are quite concerned about the target. The important thing to remember about Registers of Scotland is that it is a self-financing agency and has been since 1982—it was one of the next-steps agencies that Margaret Thatcher created when she came to power. I would be very concerned if the public were to spend money on something that would, in effect, give people a very high-quality title for free when that money could be used to do something else. A very proper appraisal needs to be done of that.

What we could do—I will shortly be coming forward with suggestions—is build a non-definitive register covering more than 95 per cent of Scotland. It would tell us who owns the land, what its value is and who occupies it. That is what a lot of people want, in fact. They do not want the legal register; if they are planning a pipeline or a new motorway, or if they want to rent some fields, they just want to know whom to contact. There are

measures that we can undertake to provide that information.

A particularly good thing about the review group's report is the fact that it discusses a national land information system. We are wasting an awful lot of money at the moment. The Scottish assessor keeps its own data; the land register keeps its data; the Scottish Government keeps its data for agricultural administration; Scottish Water and the other utilities all have their own data. I have been looking at maps from the old North of Scotland Hydro-Electric Board from the 1960s, and they are the most detailed maps on ownership and occupation in Scotland that I have ever seen.

All the information is there, so we could actually build such a register within two years. We do not need to rely on the legal register or to do the vast amount of work that needs to be done to ensure that every single line in the legal register is correct. That needs to be done because, if the legal register is not correct, we are talking about large sums of compensation, because people's land is, in effect, being stolen from them.

**Alan Laidlaw:** To answer Nigel Don's question, I sit on the Royal Institution of Chartered Surveyors' professional group for Scotland, so I know that, as Andy Wightman says, the interpretation of the legal position against the maps is the key point of detail. Some of the maps go back a long time and are not on a digital GIS system. On some, the width of the line drawn by a quill is equivalent to 100m or more on the ground. The point of detail is about the interpretation of today's Ordnance Survey data versus historical titles or plans.

I agree with Andy Wightman that a lot of the information is already available. The report highlights that, I think, about 85 per cent of the data is already included in the farm integrated administration and control system—IACS—plans, and Andy Wightman has alluded to other systems that are available. The Forestry Commission and Scottish Natural Heritage have a pretty handy GIS system that allows people to click and see what is happening in their back yards, such as what grants have been paid or what environmental schemes are running. If those bodies have that data, they will have another layer of granularity below that. From the Crown Estate's point of view, there would be no issue at all for most of the larger landowners, whom most people know anyway, with having a plain GIS layer that would, as Andy Wightman says, allow people to click and find out who to phone if they have an issue.

**Claire Baker:** When we talk about the register, there seem to be two issues. One of them is about collecting information on what we already know. We have talked about the fact that there is a certain degree of information, and that it could be

in one place. The review group report also mentions beneficial ownership and overseas ownership. It says that the group's proposal on EU entities

"would not necessarily reveal the final beneficiary owner of the EU entity",

but that it

"would ensure the entity is governed by EU law".

When we considered the Land Registration etc (Scotland) Bill a couple of years ago, it was proposed that the register should contain information on beneficial ownership. The report says that the group's proposal is "one potential measure" to address the issues of traceability and accountability. Are there other measures that would be helpful in identifying beneficial ownership?

**The Convener:** The witnesses can certainly pick that up as we go along.

**Nigel Miller:** I want to respond to the points that Nigel Don and Patrick Krause made. We are totally supportive of the aims of the registration process and of transparency. Good mapping is already in place for most farms, so the process could perhaps roll on fairly quickly.

Patrick Krause's point about crofting is crucial—it is a special case. The reality is that there is not good title on many crofts and they are not well mapped. Doing that in a piecemeal way is a recipe for disaster. It is perfectly reasonable that farmers and estates should perhaps carry the cost of the process to a degree, but that is not the case for crofting. The process must be done on a township basis to ensure that the results are accurate and to sort out the inevitable issues on the ground about boundaries that are not well demarcated. If we do it on a piecemeal basis, we will create problems. That means that, unlike with other sectors, we need to put in a bit of money from Government. The present process will create problems for us.

**The Convener:** I ask Patrick Krause whether he wants to come back in at this point.

**Patrick Krause:** I just have a wee point. I want to restate the point that everyone is making: we need the information. If we are to reform Scotland, we need to know what we are reforming. To answer Nigel Don, an awful lot of croft boundaries are not known, as Nigel Miller said, which is why we have to establish them through negotiation and through mediation methods to get people together.

As Andy Wightman says, there is loads of information out there, but it is almost impossible for individual crofters to find that information. Therefore, we need to do it in groups. It is great that Registers of Scotland is in the process of

appointing somebody to support crofting communities in their mapping. I hope that something will come from that.

10:45

**Sarah-Jane Laing:** Nigel Don asked about where staff and resources are targeted. Buccleuch Estates has taken on GIS mapping staff—it would love the exercise to be as simple as just mapping the extent of the estate.

All landowners and the landowners organisation are committed to transparency of ownership. We have said previously that what matters most is who occupies the land, who to contact about it and who makes the decisions. I am very surprised to hear Andy Wightman say that that is what he is after. He spoke earlier about needing to find out who is behind a company. It is not that hard to find out who makes the decisions and who the contact is—that information could be on a land register lite, so to speak. I think that everyone around the table today is committed to that.

**The Convener:** What is your view of Claire Baker's point?

**Sarah-Jane Laing:** We have looked at the EU recommendation and, as an organisation, we have been quite clear that there is no way that we would stand up for the tax evasion, tax fraud and money laundering that Andy Wightman referred to, although I am not aware that there is evidence of any of that occurring on Scottish estates. Traceability, transparency and accountability are the driving forces behind our organisation. There is merit in looking at the EU recommendation.

**Angus MacDonald:** Does the panel agree that, if the recommendations on registration and transparency were to be taken up—clearly there is a lot of work to be done to look into them—there would be an impact on the rural property market and land prices?

**Andy Wightman:** The land market in general would benefit from a much more streamlined process of land registration and, ultimately, transfer. We want to write lawyers out of the process altogether. You should be able to—as people can in some countries—go online to buy my house without needing to bother anyone else. The history of land registration has been one of the legal profession blocking it, particularly in England, because it generates lots of money for lawyers as they are the only ones who understand those complex systems. If we had simpler systems and clearer titles with e-conveyancing, everyone's costs would reduce.

**Alex Fergusson:** I might not say this too often during these discussions, but I want to put on the

record that I entirely agree with Andy Wightman on that point.

**The Convener:** Thank you for that.

Graeme Dey will lead on the issue of public ownership.

**Graeme Dey:** The review group makes several recommendations about public land ownership, including ending the Crown Estate Commissioners' involvement in Scotland and devolving their statutory responsibilities to the Scottish Parliament; reviewing and abolishing where appropriate Crown property rights in Scots law; and developing a more integrated and ambitious programme of land acquisitions for the expansion of the forestry estate. I would welcome the panel's views on those topics. I would also welcome suggestions about common good land.

**Alan Laidlaw:** We read the report with interest. However, there are a lot of areas in it that show that the group might not understand the depth of what is involved. Ownership of assets is not equal to omnipotent control. We manage the assets, but we can do nothing without the relevant consents of regulators, planning authorities and others. We work very hard to make sure that there is community buy-in, and we need to work in partnership with adjacent organisations and others who have an interest.

We also need to be careful not to narrow our thinking too much on this and to be sure that we are meeting the group's objectives on maximising the stake of communities and individuals in the management of local assets, on helping communities to become stronger and more resilient and on investing expertise and capital. We can bring a lot to those opportunities.

There are risks involved in devolving some of the assets to local authorities and to the Scottish Government—we could end up throwing the baby out with the bath water and in conflict with some of the regulators. For example, we would not hand the planning and regulation of an onshore wind farm to the landowner who was going to benefit from the receipts, and you can see the difficulties that local authorities get into in relation to allocating housing on their own land.

The distance between ownership and regulation has been discussed quite a lot in the past. For example, there was conflict over the Crown Estate being owner and regulator in relation to aquaculture, which is something that we pushed to change—probably back in 2007, although it took a number of years. We end up with a direct conflict when someone gives consent to an activity from which they will benefit directly.

We are doing a lot to work with communities. We have to look at the flow of funds back to the

coastal communities fund. There are areas in relation to which we need to improve and work more collaboratively, and we are working hard to do so.

I think that people do not necessarily understand how complex the sea bed and foreshore areas are and the number of competing interests on the ground. A person can stand on the foreshore and think that it all looks quite simple out there, but I guarantee that if they look at the GIS planning and mapping and the different interests in the area, they will realise that there is huge potential for conflict, which could stand in the way of meeting the Government's targets for sustainable growth of aquaculture or cause difficulties with moorings, safe navigation and so on. There is quite a lot in there, so we need to be very sure that change will lead to improvement.

**Dr Macleod:** I found some of that argument slightly perplexing. The land reform review group's formal recommendation is that the Crown Estate's powers be devolved to the Scottish Parliament, but the group went on to say that there is a case for devolving beyond that, to local communities themselves—I think that Alison Elliot mentioned that last week. The idea that it would be too complicated for community organisations or the wider community to manage and benefit from the assets on the foreshore over which the Crown Estate currently has governance is ludicrous.

**Peter Peacock:** Let me follow that, in the same spirit. Community Land Scotland made a lot of representations to the Scottish Affairs Committee when it considered the Crown Estate a couple of years ago, and we argued strongly that the management and operation of the Crown Estate needed radical reorganisation. We did not address the specific question of devolution to Scotland or retaining responsibility at Westminster, because we took a community point of view, in which what happens at the local level matters more than how things are managed at a national level.

We have no difficulty with the recommendation that the Crown Estate's powers be devolved. Indeed, we see significant advantage to such an approach. However, what is important is what happens thereafter. I can see exactly why the review group suggested that there could be further devolution to local authorities, which could have a role to play.

I would have liked the report to place more emphasis on the point that Calum Macleod made and which we have made, which is that where a community already owns its land it should have control of its foreshore and an inner zone of the sea bed. We cannot detach the foreshore and the inner zone of seabed, where a lot of economic activity takes place from the land—they are connected.

Alan Laidlaw and I get on well when we talk about rugby and so on, so I regret that I must say this. I thought that his latter comments were patronising towards communities. In light of the experience that we now have in Scotland, do not tell me that people who are running 100,000 acres in South Uist, for example, who are operating a multimillion pound wind farm, developing a £20 million harbour and investing in crofts and the land, are not capable of understanding what happens offshore and the potential in that regard. They are absolutely capable. What is more, and with respect, they have a far greater incentive to do something about the economic potential than the Crown Estate has.

In many of the communities from which our membership comes, the Crown Estate is regarded as a distant landowner who simply takes rent on the back of other people's enterprise. We—and, I think, the land reform review group—are arguing that that should be turned on its head, so that the incentives to develop are provided locally, through local ownership and control. The detail needs to be worked on, but the direction of travel that is recommended is entirely laudable and is to be supported.

**The Convener:** There was an intercepted pass there, so I will give Alan Laidlaw another try.

**Alan Laidlaw:** I am not sure that my front row legs will get me all the way to the line, but we will see.

I have never said that communities cannot manage this. I have seen the examples from Peter Peacock's members; I have spent time doing a lot of engagement with his members, and I have seen the good work that they do. We are clear that we have come a long way to acknowledge this. On Friday, we will be holding a workshop with Peter for community membership groups to look at the local management agreements that we have developed over the past couple of years—we have mentioned them to the committee previously—and our engagement with community toolkits.

We are also looking at a foreshore sale pilot with one of Peter's members to help with local control of those assets. I agree that the people in that area are very well placed and are behind the health, success and vibrancy of the area in a positive way.

We work really closely with community groups. We would like to do more, but we find it difficult to get into community groups in certain areas. We have worked with a number of organisations on our local management agreements—in Portree and Lochmaddy, for example, where we have put capital investment into the area, and in West Harris, Gigha and other areas, where we have talked about future opportunities. We are not

saying anything about how communities manage that.

The inshore area is of far more interest. You have to bear in mind that we take a 20,000-foot view of the strategic importance of the sea bed. That is where we start getting into different challenges. It is interesting that the Wood Group report on oil and gas talked about collaboration in the sharing of data and so on in relation to oil and gas. That report looked at putting more emphasis on the stewardship of the assets; it also considered resource and activity regionally rather than site by site. In response to that report, an arm's-length body is being set up by the Department of Energy and Climate Change to manage oil and gas. That is what we need for renewables. We need to be clear that a strategic view at that level is really important to Scotland's successful delivery of energy targets and economic objectives.

There is a line to tread between strategic asset management and local interest and engagement. It is for Government to choose where that goes, but we need to be really clear that we can potentially offer the best of both.

**The Convener:** We will park the Crown Estate issue at the moment because other people want to come in on the issue of public land ownership.

**Willie McGhee:** Our interest is in the national forest estate, which is covered in section 13 of the LRRG report. We welcome and endorse the recommendation that the review group made. We found the recommendation slightly vague but there was a lot of detail in the discourse. We picked up on three things: how flexibility in leasing national forest land could be provided; the creation of starter forests—we are all aware of starter farms but we have yet to hear of a Forestry Commission starter forest; and diversification of forest ownership through national forest land disposals.

We have met Paul Wheelhouse jointly with the Scottish Woodlot Association. After some exploratory legal work, the impediment that we found to leasing forest estate was the same impediment that was flagged up by the LRRG, and the key element is the definition of community. We proposed an amendment to the Public Services Reform (Scotland) Act 2010—it was a very minor tweak that, without changing the Forestry Act 1967, would have broadened the definition of community and would have allowed groups and individuals in not-for-profit groups that were approved by the Forestry Commissioners to lease Forestry Commission-managed land. We know that there is a recommendation for a new forestry act, which we welcome, but that may take some time.

On the creation of starter forests, we all know that the Forestry Commission and Forest Enterprise are buying land and we are pleased that they are going down the route of starter farms in their land purchases. We think that having new entrant farmers is an excellent idea, especially for young people who cannot get access to land any other way. We propose that exactly the same is done with starter forests for individuals or groups. However, there is no such thing as a starter forest on the books as yet.

11:00

We also endorse the recommendation on diversifying ownership. As the report says, one of the easiest hits in relation to diversification is through forestry. The Scottish Government has in its power the ability to acquire then dispose of forestry land, perhaps by creating sublots. We have met the Forestry Commission, which is making all the right noises. The report gives impetus to what we have been pushing for, and our opportunity to give evidence today is a further stimulus for the Forestry Commission to take action.

**The Convener:** We will ask the minister about state aid issues and the Treasury rules that have been alluded to in the report.

**Nigel Miller:** The report refers to the land use strategy, which is pivotal in determining future land use. The report repeatedly refers to land acquisition, and section 13 refers to increasing the forest estate. The woodland expansion advisory group looked at that issue and proposed an expansion of 10,000 hectares over the next few years. That may be disputed, but that is where we are.

It seems strange that, at this stage, the land reform review group is advocating that we go further than that and undertake more aggressive land acquisitions, without taking into account other strategies. The Government's food and drink strategy shows that our exports are worth £5.3 billion, and we are meant to increase exports by 2017 to £7.1 billion. The food and drink sector provides 300,000-plus jobs in Scotland and it is a major export earner. It is not right to ignore that and the balance with other kinds of land use. I hope that the committee will review that priority and look at a more balanced approach.

The forestry estate amounts to 650,000 hectares, in comparison with Scotland's farming capability of around 800,000 hectares of permanent grass and 900,000 hectares of arable land. If woodland were to expand by 10,000 hectares a year over the next few years, the reality is that there would be less farming capability, yet we are also looking at increased production. We

must accept that, although limited, our agricultural resources are a key part of our future economy and should be protected.

There are also concerns about land values. Forestry acquisition by the state and by private forestry interests has, without a doubt, significantly pushed up land values in upland areas. Perhaps that is not a positive thing.

In the Borders and other parts of the south-west and in the north, we have communities dying and schools lost because large tracts of land have been taken out. More balance is needed and we must respect the strategies in other reports that the Government has commissioned.

**Andy Wightman:** I will very briefly respond to—

**The Convener:** It would be very useful if you were brief—I am not singling you out by any means.

**Andy Wightman:** It is important for the committee to understand that the Crown Estate Commissioners do not own any land. All that they own is Alan Laidlaw's file; presumably, the pen that he is using belongs to his employer, too. The land is owned by the Crown; the Crown Estate Commissioners merely administer the Crown's rights. Scotland used to administer those rights until 1830, when they went down to London. We are talking about the administration of public rights. Public Crown rights are already Scottish public rights. The Scottish Affairs Committee was very clear in its recommendations, and the Parliament should adopt them. Under the Scotland Act 1998, the Parliament could nationalise Crown land in Scotland if it wanted to.

There is a big debate to be had on the Forestry Commission. With public land, there is an issue with how more control, administration and management can be devolved. In countries such as France, around 30 per cent of public forests are managed and administered by communes.

We have a centralised Forestry Commission. I remember Jim Hunter describing the Forestry Commission as being to Scottish forestry what collectivisation was to Soviet agriculture. We could do something exciting with the land acquisition powers that Scottish ministers have, but it is important to ensure that those powers are used not simply to increase central control in Edinburgh but to revitalise communities. We can build forestry differently from how that has been done in the past.

**Dave Thompson:** I return briefly to the Crown Estate. Peter Peacock made an interesting suggestion about control for communities that have bought land. Of course, others will raise the question, "Well, if community owners have that right, what about us?" The report recommends

devolution of Crown Estate administration to the Scottish Parliament, as Andy Wightman says, and I am keen that it should be devolved right down to local communities.

I wonder whether some kind of two-tier system might be the ultimate answer, with the Scottish Government having responsibility for an overview of certain things—we would need to explore the details of that—and local communities having responsibility for dealing with those issues in their own areas. Local authorities might have a role to play, otherwise we would need to define local communities, but it is important that we delve into that as we go through the report. A lot more work will be done—these are initial discussions, as far as I am concerned, and we are trying to tease out where we are going. I just want to suggest that a two-tier system could be the way forward.

**The Convener:** We need somebody to haud the jackets while people argue about what their community rights are.

**Alex Fergusson:** I would like to touch on forestry. Claire Baker and I were both at a Confor conference in Edinburgh last week. Two things came out of that, one of which has been put to the committee before—that in 20 years' time Scotland's forestry sector faces a real crisis in the supply of commercial timber.

In his speech to the conference, the minister Paul Wheelhouse made it clear that the future of the commercial forestry sector in Scotland is very much in the hands of the private sector, suggesting that the purchasing power of Forestry Commission Scotland is likely to become less and that the private sector will have a greater role to play. Without wanting to get into Nigel Miller's understandable concerns about farming or forestry, or my own views on farming and forestry, I wonder how Andy Wightman and Willie McGhee feel that the recommendations of the land reform review group on forestry tie in with the two points that I made about that conference.

I should say that I very much welcome the first woodlot in Scotland, in my constituency, and that I think that it is an initiative that has a future.

**The Convener:** Before Andy Wightman and Willie McGhee come in, Peter Peacock and Alan Laidlaw have points to make.

**Peter Peacock:** I have two or three quick points to make. Dave Thompson mentioned a two-tier approach, or even a three-tier approach, because control might go to a local authority before it went to a community. We completely accept that there is a strategic interest—here, I agree with Alan Laidlaw—in looking at big offshore and other developments that could not be done at a community level, and might not even be possible at a local authority level, but which would require a

wider Scottish view. That apart, there is real merit in what Dave Thompson suggests.

I support what Willie McGhee said about the potential of forestry and about breaking up larger forest blocks so that communities and individuals can develop a future around them. There is real potential there. In that context, I would like to make it clear that the state aid rules that you touched on, convener, are a significant obstacle.

I know that a lot of work has been going on and that a helpful decision was recently taken to allow the community in Aigas to get funding from the land fund, notwithstanding state aid. I hope that that points to a new direction, but it requires work to be done, because we could be tying our own hands with interpretations of state aid rules that are unfortunate in that regard. That point needs to be taken seriously by the committee, because state aid is a practical obstacle to progress.

**The Convener:** That is part of a workstream—one among many—that we are beginning to identify.

**Alan Laidlaw:** Ownership has come up again and again. I talk about how we manage our assets and how our team in Scotland manages them for Scotland. We deliver due to scale, expertise and diversity. If we look beyond the name of the Crown Estate, there is a model that we believe delivers broadly in communities with long interests in terms of long-term value, sustainability and preventing conflicts in the planning system that can really hold up development.

The coastal communities fund is delivering £22 million-plus of job-creation projects in Scotland between 2012 and 2017. We need to consider that strategic level. We are engaging Peter Peacock's members and considering ways that we can get local input and management.

We have a pilot scheme in Tobermory, where the harbour interests are being looked at. That is very much in the grain of what Peter Peacock is talking about—people in the local area having the greatest interest in the success of their area. I am 100 per cent aligned with that. We just need to be really careful about the bigger strategic piece and some of Scotland's biggest targets, such as those on energy, aquaculture and the food and drink industry—as Nigel Miller highlighted, there are some really important players in there. Then we get on to broadband cables to the islands and essential services on which we are able to take a very long-term view.

I am concerned that the report says that we take a narrow focus on what we do and do not take into consideration the impact on communities. I disagree entirely with that. Without successful communities and activities, we are not successful. It is a symbiotic relationship that needs to work

from both sides. The report has missed that entirely.

**The Convener:** I will tie up this question. I do not think that anybody has answered Graeme Dey's question about the common good. If they have something to say about forestry, Willie McGhee and Andy Wightman can finish this section off. I point out that we have 10 broad questions in our minds and this is question 3.

**Andy Wightman:** I was the source of the data on common good in the report because I am in the process of writing a report on where we are at with it. It is also the subject of the forthcoming community empowerment bill.

I endorse what the report says. We need to have a statutory definition and statutory registers of common good assets, and communities should be able to take back the assets that they lost in 1975. In many cases, they did not want to lose them, but there was not much choice. St Andrews, for example, got a private act of Parliament to ensure that it kept its common golf links. Auchtermuchty and North Berwick did the same, but many did not. I would like those assets to be returned to the communities if they wish them to be.

There is a big debate to be had on forestry. I understand Nigel Miller's concerns, but there is no problem in expanding forestry in Scotland without touching on the best agricultural land. We have vast areas devoted to hunting estates that could still be used as hunting estates but could also be extremely well wooded.

Relying on the private sector and the way that it goes about its business is not the most profitable way of building Scotland's forest resource, because many of the people who own it do it for the tax benefits. They are investment companies, people who live down south, absentee owners and Russian oligarchs. I would like Scotland's forest resource to be in the hands of local people, resident landowners and communities. We could get a lot more from the forest if that was the case, because it would support local communities rather than being a fenced-off enclosure earning someone a return.

We saw the returns that are available from forests the other week—9 per cent. Loads of money is pouring into forestry from accountants in London. That is just not the way ahead for private forestry.

**Willie McGhee:** Andy Wightman has said most of what I wanted to say.

On Confor and the NFUS, I say a plague on both their houses. I worked for 15 years in the Scottish Borders trying to find a compromise between industrial foresters and farming.

Fortunately, many of the farmers we dealt with in the valleys were not set on maximising production but were, rather, interested in diversification and local development to keep the schools full. Our job was to try to get sufficient forest on to their land to give them diversification of income.

There is a balance to be struck. Neither Confor nor the NFUS is doing itself any favours in that debate.

**The Convener:** We will leave that hanging in the air and turn to community ownership.

The land reform review group report contains recommendations on community ownership with regard to the right to register an interest over land, the right of pre-emption to buy land, the right to request to buy public land, the right to buy land and the right to request a compulsory purchase order over land. What do our witnesses think about the suite of proposed options? Are they sufficiently comprehensive or are they too detailed?

11:15

**Peter Peacock:** Before I come to the specifics of your question, convener, I want to address something in the discussion so far that has slightly grated with me, although that might be putting it too strongly.

The report is very comprehensive overall but it falls into two distinct parts: the detailed recommendations that we have been focusing on; and some very fundamental principles that lie behind them. I want to touch on the principles because they are what shape and make sense of the recommendations.

I welcome what is said in the report about community ownership, but like Alex Fergusson, Nigel Don and Willie McGhee, I think that there are points of detail that require to be looked at. In a sense, that reinforces the point that I want to make, which is that the report is really changing the terms of debate about land in Scotland.

Alison Elliot made a hugely important point last week when she gave evidence to the committee that land is a finite and crucial resource that requires to be owned and used in the public interest for the common good. In other words, land is not just a private commodity but a public interest. The report talks about the public interest in having greater diversity of ownership and states that the land debate ought to be framed in terms of land ownership as well as land use. It states that we cannot debate just land use, because ownership of land largely determines its use.

Once we get hold of those principles, then from Community Land Scotland's point of view every recommendation is part of a coherent whole.



There is a lot of detail to be worked out, but that is exactly why Community Land Scotland is making such a comprehensive range of recommendations: it is seeking to change the very concentrated nature of land ownership in Scotland and make it more diverse, and all the detail will help to support that. That takes us to community ownership.

The analysis of community ownership in the report is spot on and very welcome. The person in the land reform review group who is, in a sense, behind that analysis is possibly the most experienced person in Scotland on the question of community ownership, having dealt with it for 30 years. The group is absolutely right to talk about the simplification of part 2 and, in particular, part 3 of the Land Reform (Scotland) Act 2003 in relation to the crofting right to buy and the mapping requirements, which are significantly too onerous and probably very unnecessary.

The group talks about there still being barriers to community ownership, which I think is absolutely right because there are. As the convener indicated, the menu of rights that the group sets out is designed to address those barriers. Again, we strongly support what the group says. The group has quite properly re-termed as the actual right to buy what was previously known as an absolute right to buy, because it was never that but a highly qualified right to buy. We support the actual right to buy if it is in the public interest—I stress that.

The powers of compulsory purchase seem relevant and the powers of compulsory sale orders seem highly relevant. We also think that the group's emphasis on negotiation as the means to secure transfers is exactly right, provided that there is a backstop power to encourage all of that. We also think that it is right that a community land agency facilitate the discussions and support the whole process. We therefore strongly support all the recommendations.

There is a lot of detail to be sorted out about what exactly the process would be to exercise the actual right to buy, how the compulsory sale order and the compulsory purchase order will fit with a register of interests in land, and the rights that a community would have to an actual right to purchase if the recommendation went through. In addition, would auctioning land under a compulsory sale order be the right way and how could communities actually participate in that?

There is lots of detail to be sorted, but that is what it is: detail. That can all be sorted by the committee and the Government working on it. However, the direction of travel and the specific recommendations seem to us to be exactly right. My plea would be to consult and act quickly—encourage the Government to consult quickly and then use the forthcoming community

empowerment bill to maximum effect to change as much as we can, as quickly as we can.

**Sarah-Jane Laing:** I echo Peter Peacock's point about underlying principles, as well as the recommendations, being a key part. However, one principle that I felt was missing from this section of the report was that deciding not to exercise the right to buy can be as much a sign of an empowered community as deciding to exercise the right to buy.

I agree with Peter Peacock that the establishment of a community land agency should be looked at as a matter of urgency, because a plethora of willing sellers and communities are trying to find their way through the process. It is some years—I am not sure exactly how many—since the publication of the report on how the legislation could be improved. It is disappointing that we have waited until now to improve the operation of the current legislation.

Unsurprisingly, I disagree with Peter Peacock about some of the elements. We have said before that the CPO mechanisms can be improved, but local authorities already have CPO mechanisms. If the owner of the only plot in a village that could be made available for housing is not bringing it forward for development, there are actions that can and should be taken.

We have some problems with some of the recommendations. I will not get into a debate about the ownership of land, but I urge the committee to help as quickly as possible people who are trying to find a way through the minefield of the current provisions.

**Dr Macleod:** In general terms, the fact that the report makes very clear the principles of the importance of ownership, the common good and the public interest is really important in bringing land reform from the margins of public policy—where, frankly, it has been residing for the last years—to the centre. Overall, the report provides a good framework for that. Sure, there are issues around implementation and the technicalities, and there will be different views on those matters, but the overarching framework is very important and the institutional framework that is being suggested is very important in formalising that.

I came before the committee with colleagues three or four years ago to talk about the research that we had done on the Land Reform (Scotland) Act 2003. Part 1 seemed to be working well and part 2 was working but part 3 was not working at all. The options that have been suggested to provide opportunities for communities seem entirely appropriate, as they provide a wide-ranging menu. As Sarah-Jane Laing says, there will be different options for different situations, but

the breadth of opportunity and the variety of options seems entirely appropriate.

**The Convener:** I think that you would agree that allowing the current legislation from 2000 and 2003 to bed in was part of the reason why land reform was not front and centre. In fact, your report two or three years ago began to show up some of the problems with the changes that were made.

**Dr Macleod:** Absolutely, convener. You are right that there is a longitudinal element to such an evaluation, but there are now opportunities to act quite rapidly to legislate on aspects of the community ownership element. The community empowerment and renewal bill offers opportunities to do so.

I would like to see where amending the crofting community right to buy sits within the grand scheme of legislative and other institutional elements, because there is no need to go into any huge discourse on the issues that exist around that initiative.

**Nigel Miller:** I will try to be quick. The issue has touched a nerve with some of our members. We accept that there will be wider community ownership and that that is a benefit for us all. The key for us is that the public interest test is robust and that there is an ability to fund and manage the project once it progresses. If that is the case, we must be positive about the matter.

However, there seems to be an extensive menu. The review group's recommendations include

"a right to register an interest in land ... right of pre-emption ... right to buy land ... rights to request the purchase of public land".

The recommendations also include compulsory purchase, compulsory sale orders and a pre-emptive right in relation to the development of land.

In our view, we should try to simplify the process. The pre-emptive right seems to be pretty useful, but does there need to be a right to register an interest in land if there is a pre-emptive right? Why do there have to be two devices? If there is a right to buy land if it is in the public interest and ministers approve it, why does there need to be a compulsory purchase order? Could we not simplify the list, give the key powers that are required and ensure that the process is simpler for communities and for landowners?

I totally get the idea of diverse land ownership and the empowerment of communities, but the reality is that for many communities some sort of partnership approach with farmers and landowners would be perfectly sensible and might well be easier to progress, because there would be a genuine partnership and there would be

multiple land uses. In woodlands and in some access areas, such an approach would work perfectly well where there are different land uses.

I regret that there was not a greater emphasis on taking a partnership approach, rather than having a focus purely on ownership. That focus may be the right thing in many cases, but in many others a partnership approach would be very positive for both parties.

**The Convener:** We should ask the minister about those sorts of things. I want to wrap up this section so we can take a very short break. Alex Fergusson and Alan Laidlaw can finish.

**Alex Fergusson:** Thank you, convener—I will be very brief. I just want to add to what Nigel Miller has said.

I have a brief question for Dr Macleod. I am a fan of community ownership, and I would like to see more of it in the south of Scotland; I have talked to Peter Peacock about that in the past. However, everything that I see in the report suggests a large bureaucratic process with a very central guiding hand on it. Why am I wrong in thinking that the recommendations are seeking to centralise a process that, to my mind, ought to be very local?

If you are talking about community ownership and community benefit, you are surely talking about a process that should essentially be local, working in the spirit of partnership to which Nigel Miller referred.

**Dr Macleod:** I entirely agree that the process should take place in a devolved local context. The issue is that Government has an important role to play in facilitating that type of opportunity. Providing resources—whether that involves financial support or any other type of support—is an appropriate role for Government in that context. Providing the institutional framework to help to facilitate that is also very important.

The Government role does two things. To begin with, it formalises and brings to the centre of public policy the issue of land reform, which has not been there for the past 10 years or so. It also provides institutional impetus for that shift. Of course, the system could be quite monolithic and bureaucratic, but the flipside is to consider how it is designed to ensure that it connects on the ground in communities through the type of support mechanisms that it provides. That will enable communities to tap into whatever resources and potential they may wish to use in their own locally based development.

We can see examples over the past 10 years—and before that, in fact—in which the engagement of Government policy instruments for different types of support have been invaluable in helping

organisations to engage in that development. I do not accept the top-down, heavy-handed, dead-hand-of-government argument at all; Government involvement can help to catalyse potential within communities.

**The Convener:** I ask for a sentence each—or there will be a sentence on the lot of you. We will take a short break in two minutes.

**Alan Laidlaw:** My sentence is that the system has to be fit for purpose, as Calum Macleod said, and we must ensure that the willing activities of the community and of the owner, manager or other interested party in the area can work. There are a number of examples in which really good stuff is happening quickly, and other examples in which there has been willingness on both sides but things have taken years. Making that effort for so long takes a lot of enthusiasm out of the community and the owner.

I commend that the support is fit for purpose and is available for people to draw down when they need it. It should be firmly focused on delivery. A point was made in last week's meeting on the availability of advice in the Highlands and Islands area versus availability in the rest of Scotland. The south of Scotland is certainly in need of that advice too, at times.

**The Convener:** That is a complex sentence—thank you very much.

**Peter Peacock:** Picking up on Alex Fergusson's point, I would share his worry that the system could become bureaucratic if it was allowed to, as the last thing that we want is a heavy bureaucracy or centralisation, but I do not see it happening that way. The recommendations are for enabling and liberating powers for communities to operate. In that context, Nigel Miller points to some interesting questions that require to be addressed with regard to how we keep things simple.

**Andy Wightman:** In response to Alex Fergusson's point, I have always argued that all such powers—including the powers in the 2003 act—should never be administered by central Government. That should be done by local authorities.

Central administration was a big mistake, and there have been big problems with ministers deciding, for example, what is in the public interest for a small community in Kinghorn. Why should ministers get involved in that?

We have a very centralised state. I would bring all those powers down to the local authority, and ministers' sole responsibility would be to ensure that the powers are being used in the public interest generically. Ministers would operate schemes that are fit for purpose, but the day-to-

day administration and decision making should be local.

**The Convener:** Thank you. We will take a short five-minute break, but we have a lot to do, as we have only reached the end of question 4.

11:30

*Meeting suspended.*

11:39

*On resuming—*

**The Convener:** We will start with Claire Baker leading on agencies to support communities and oversee governance.

**Claire Baker:** The report recommends the establishment of three agencies: a community land agency, which we have discussed in part, a housing land corporation, and a Scottish land and property commission. I am interested to hear the panel's views on those agencies.

On the Scottish land and property commission, how might such an agency respond to what Peter Peacock said about recognising the report's principles and defining the direction of travel? For me, that is also about establishing short, medium and long-term targets and delivery plans. Comments have been made about the 10-year timescale. In some ways, not a lot has happened, but the report identifies many little bits and pieces that have happened under various pieces of legislation. I do not think that Fergus Ewing—who took it forward—recognised the significance for land reform of the Land Registration etc (Scotland) Act 2012 and the evidence around it; joined-up Government on what was to be achieved was lacking. Such a commission would perhaps give us an opportunity to look into that.

Whether we need three agencies has been questioned. Is the creation of that number of new bodies necessary?

**Nigel Miller:** We are totally supportive of there being some form of land commission. Our plea would be that under the agricultural holdings legislation review group either an ombudsman or an adjudicator would be considered. I suppose that an adjudicator's role would be about intervening when there was inappropriate land use or management and sorting that out, and that they might have powers of compulsory purchase if that process went wrong.

If we are to have a land commission, it would make perfect sense to keep the roles together rather than have two or three different bodies operating in the sector. Our view is that, rather than ownership, how land holdings are operated, the standard to which they are operated and the

opportunities that they create for communities, the economy and the environment are the key things. We think, therefore, that that adjudicator role is pretty important, as is the role of having an overview of the ownership of land, which is what we are looking at.

**Derek Logie:** I will confine my remarks to the housing land corporation and community land agency. In our written submission, we welcomed the promise that the housing land corporation would be more strategic, would deliver more land for housing and would help to reach targets for affordable and private housing. Our main issue is about scale and how the proposed housing land corporation would work with small rural communities and deliver land for housing in rural Scotland. The report has certain caveats in relation to how the land corporation would work directly with communities in understanding local housing needs better. If those things come through, that will be great.

We look forward to hearing more about that, but we need more detail on the housing land corporation, for the future. The report talks about “taking land into public ownership at a low but fair price”.

We do not have any understanding about how that would be done. The devil is in the detail.

We see a crossover between the housing land corporation and the community land agency. That is the level that we work at—we help small communities to buy land for housing. Much of the time, that can be done on a voluntary basis, but sometimes it is about negotiating with a landowner. We want to know how the housing land corporation would fit in with that. When we have a more detailed understanding of the housing land corporation, we will perhaps understand whether we need both agencies.

**The Convener:** That is helpful.

11:45

**Sarah-Jane Laing:** On Claire Baker’s question about the housing land corporation, the report describes the proposed functions of the agency. There are lots of functions that Scottish Land & Estates, as an organisation that represents housing providers, would support, but our view is that we should follow the model that has been developed by rural housing enablers such as Highland Housing Alliance, the Highlands Small Communities Housing Trust and Derek Logie’s organisation, Rural Housing Scotland.

I do not think that a national top-down housing land corporation is the way to deliver for rural communities. I would like to see the approach and the funding for affordable housing being targeted at local delivery mechanisms, based on

community planning and community needs and working as part of an enabler model. I do not see the merit in creating a new housing land corporation. For those of us who have been involved in housing for some time, the idea of a national housing corporation has negative connotations. Rural housing seems to have moved away from that national picture in order to meet local housing needs.

**Graeme Dey:** My question is triggered partly by what Sarah-Jane Laing has said. What scope is there for bringing derelict plots back into use? Rural parts of Scotland are absolutely peppered with properties that have been left to fall into complete disrepair. Most of the buildings would not be salvageable, and even if they were they would not meet current sustainable environmental standards. Could there be a mechanism—it would probably have to be a national mechanism—for acquiring such land or for encouraging its being brought back into use for housing?

**Sarah-Jane Laing:** There are a couple of things that we could do. Rural Housing Scotland, Scottish Land & Estates and others have looked at planning designations for affordable housing. We refer to some designations as rural exception sites. They tend to be bigger sites, but if smaller derelict sites could be categorised as rural exception sites that could be used only for affordable housing, that would deflate the market value straight away, so people would not be sitting waiting for the largest amount of money.

That is exactly what the rural housing enabler model that I mentioned does. People go round and look for land that can be used to meet local housing needs, and they work to bring that land back into use. It is an excellent model that should be supported. If those two mechanisms were brought together, combining planning, the enabler model and—if need be—the CPO powers, that could provide a coherent approach to utilising such plots better.

**Angus McCall:** The Scottish Tenant Farmers Association has been a great exponent of the idea of a lands commission. In our original submission to the land reform review group, we put forward the idea of a lands commission, not just to act as an overarching monitor of the land reform process but to have a bit more power in interceding where there are problems. Now that we have embarked on the first part of our land reform journey, it is important that there is cohesion in the process. We must ensure that there is an overall understanding of the direction of travel, rather than deal with land reform measures in bite-sized chunks, as we have for the past 15 years. A lands and property commission is essential to taking that forward.

In the tenancy sector, we need what Nigel Miller called an adjudicator and what we have called a commissioner or ombudsman. We need some form of interface to ensure that we do not end up in legal wrangles, as seems to happen in cases of disagreement between landlords and tenants, with the various problems that beset the tenanted sector. As well as an overarching lands commission, various other streams, even if they do not exercise control, that can oversee what is happening are needed.

**Peter Peacock:** Community Land Scotland does not have a view on the proposed housing land corporation, because that is not our area of direct expertise. I have mentioned that we support very strongly the proposed community land agency. We would have liked the agency to be a non-departmental public body, but we accepted in our evidence that there are other ways to create such an agency. The land reform review group is talking about it being an internal Government agency that uses existing resources, so it need not be heavily bureaucratic or come at a high cost.

On the proposed land and property commission, in the spirit of my previous comments about the principles that lie behind the report, if land—as it is being recommended it should be—is a public interest matter, the case that is made in the report is that there has been no coherent view of that public interest at any point in the past. If we are going to look at land as a public interest matter and a common good in the long term, we require somebody to keep an eye on all that, to ensure that the approach is coherent.

The proposed commission would look at where the market is changing, where public policy in other respects is changing, where we are and are not meeting forestry targets, whether community ownership is working, whether the law requires updating, and all that kind of stuff. It seems sensible to have an agency that does that. It could be hugely bureaucratic, if you wanted it to be, but that is not in anybody's interests. There is no reason why it could not be quite a light-touch agency that meets three times a year, has commissioners or whatever on it and has a bit of staff resource and research capacity to keep an eye on things and report back to Government and to Parliament. The commission need not be heavily bureaucratic, but it needs to have a clear purpose of monitoring over the long term to ensure that we have a coherent view of land as a public interest and a common good.

**The Convener:** Of course, there has, inevitably, to be a land minister, a housing minister and a planning minister, because those matters are all dealt with in different departments, so in that sense the idea of coherence makes for rather interesting thinking.

**Andy Wightman:** The idea of a Scottish land and property commission to keep an eye on all this is eminently sensible. We can see that even the review group's report covers an awful lot of areas that are not in the remit of this committee, but are in the remit of one of at least two other parliamentary committees. A lot of things have fallen between the cracks.

Claire Baker mentioned the Land Registration etc (Scotland) Act 2012. The report makes a recommendation on common land, which I will do something about shortly, because a landowner in the Borders has just stolen a huge area of common land and until recently no one knew about it.

There needs to be a mechanism for keeping an eye on land, as a thread that runs through many areas of public policy, from housing to agriculture to the marine environment and so on.

I am not sure that a housing land agency is required. If fiscal matters and compulsory purchase powers are to be reformed and the community powers exist, an agency might not be needed; local authorities could perhaps carry out that role. However, there needs to be some means of going into the market and making land available for housing. We used to have new town development corporations, which were a very successful model.

On continental Europe, in Germany, France and Belgium, people can buy a small plot of land and build a house on it. A very helpful table in figure 19 in the report contains figures since 1930 that show that when we build a new house we now put much more of the money that we borrow or have into the land component, which is a completely unproductive way of using that money. In contrast, better quality houses are built on the continent—in Germany, France and so on—because people spend a greater proportion of their money on the house and therefore get better quality, more long-lasting and energy-efficient houses that generate more jobs. There is a lot in all this.

**Derek Logie:** Land values are one of the things that prevent house building. I was on the board of East Lothian Housing Association for 10 years and we did not build one rural house, because we could not afford any of the land around the villages. We need to look at land values, planning exceptions and rural exception sites, which Sarah-Jane Laing mentioned. In certain areas, if you were to pull down a derelict house, you would not get permission to build a new one because there is a presumption against any development in the countryside. You will have to get planning right before that matter can be taken forward.

**The Convener:** We will come back to taxation and things like that slightly later.

**Patrick Krause:** The Scottish Crofting Federation supports the idea of a commission. As you are well aware, we represent probably the only land in Scotland that has its own commission and is regulated. I would not wish to inflict on the rest of Scotland the law that covers crofting, but our opinion has always been that regulation of land is important. As Peter Peacock said, land is a common good.

Crofters have had ample opportunity to state whether they want to come out of regulation. They always say no—for the common good. It is important that we have regulation and that we have a commission with a board of commissioners who oversee how the land is used. The model that the commission has moved on to is very welcome; it is more democratic and it is trying to deal with matters including absenteeism and long-term neglect, but it is underresourced. We should be looking at the crofting regulation model for the whole of Scotland.

**Alan Laidlaw:** I have a couple of points to make on housing. I agree with Derek Logie: a local authority approach makes a huge difference. That approach works really well for local exception sites in Moray, where we do a lot of business. Many sites have been made available; it works really well—to the point that there are probably more plots on the market than there is a market for. That does not chime with what happens in my area, which is East Lothian. Derek Logie highlighted the completely different situation in East Lothian.

I did not look in great detail at the recommendation on support for self-build. It is really important that land be available, but there are a lot of barriers thereafter. I have a plot with planning permission for housing but for a number of reasons I cannot get finance. It is important that we look to unblock people's opportunities to build houses; that would help substantially.

**The Convener:** I think that Cara wants to develop that issue.

**Cara Hilton:** No, but it leads on to my next questions. Many of the issues that I wanted to raise have been covered—Graeme Dey stole part of my question, I am afraid.

The review group made several recommendations on urban renewal and new and existing housing, including a greater emphasis on public interest-led housing development, self-build—Alan Laidlaw just mentioned that—and the introduction of longer and more secure tenancies in the private rented sector. What are your general views on those proposals? In particular, what measures can the Government take to develop what the review group calls a “vibrant self-build sector”? In addition, to return to Graeme Dey's question, is the proposal to give local authorities

the power to exercise compulsory purchase sufficient to bring derelict land back into use or are further measures needed?

**The Convener:** I clarify that Graeme Dey asked about properties, but you are quite right to raise those questions and, without a doubt, we want those to be answered if at all possible. Who will respond?

**Sarah-Jane Laing:** I will try to remember all the elements of your questions although I may need reminding, convener.

The report mentions security of tenure, which is an issue that the private rented sector tenancy review group has considered. We have recommended to the Scottish ministers that we get rid of the tenancy regime and create yet another Scottish residential tenancy, but one that would be clear, flexible and easy to understand. That would modernise notices of proceedings for possession, so that the landowner and the tenant are quite clear when a property would return to the owner. That would give people clarity and security because they would know, if both parties are in agreement, what length of tenure they would get. The six months short assured tenancy was supposed to be used in circumstances in which there was agreement but it has become the default tenancy. Neither landlords nor tenants want that situation to continue.

That is one thing that we must do. However, creating a new mandatory minimum tenancy is not the way to do that because that would then become the default tenancy. You must create a tenancy regime that works well for both parties.

On self-build in rural areas, the first and very simple thing that the Scottish Government could do is reintroduce the rural home ownership grant. It was an absolute disaster for that to have been taken away. Reintroducing the grant does not require anything other than a reallocation of the affordable housing funding programme.

You talked about housing in general. The report has lots to say about meeting rural housing needs that Scottish Land & Estates, the rural housing service and others have been calling for for a number of years. We are delighted to see that the housing needs of rural communities could be met in a much better way than they are at present.

I hope that I have answered some of the questions.

**The Convener:** I will bring in Angus MacDonald, followed by Derek Logie and then Cara Hilton if she wants to come back in.

12:00

**Angus MacDonald:** I was pleased to hear Sarah-Jane Laing mention the need for the rural home ownership grant to return. It would also be good to have back the croft house grant, which was ditched.

I will follow up the reference to self-build. Most panel members will be aware of the our island home design competition, which took place recently. It asked architects to design an affordable two-bedroom eco-home that would be easy to build and cheap to heat and could be built for less than £100,000. I believe that the competition winner would cost £70,000 as a self-build.

There was a lot of support for the competition from architects—I believe that nearly 50 designs were submitted, which shows that the competition was healthy. Given that many architects are ready and willing to get involved, what should be done to ensure that community landowners and private landowners go out there, pick up a trowel and get building?

**Derek Logie:** Thank you for mentioning our island home. Rural Housing Scotland ran the competition and we were pleased by the number of entries.

We are delivering housing in two ways. One is through community landowners, which develop housing for rent. At the moment, we are restricted to construction in Argyll and Bute, because money is being targeted to community landowners to build houses only in that area. Everywhere else, there is no possibility of getting money. Argyll and Bute is different, because Argyll and Bute Council has seen fit to use some of its second home council tax money for that purpose.

In other areas, for self-builders to build a home for £70,000, they need development finance, but a number of mortgage companies no longer provide finance to help people to complete a property, even though the completed house would probably be worth a lot more than it cost to build. Getting a self-build mortgage is difficult, so development finance could be loaned to allow the builder to complete the property, when they could get a proper commercial mortgage and repay the Government or whoever loaned the money, such as a local authority.

Sarah-Jane Laing talked about rural home ownership grants. Nowadays, much land is in community ownership. West Harris Trust is not giving away plots, but it is selling them for £15,000 at Luskentyre. Given that, we need people to be able to build their own houses on those plots, but there is no grant or assistance for them to do that.

**Peter Peacock:** I will respond to Mr MacDonald's point about community owners. Recently, we did an economic indicators study of 12 community owners. The striking thing, which was a great surprise to us, was that perhaps the greatest activity that has gone on in the past five or six years among those 12 owners has related to housing. Something like 300 housing units have been created or are on their way to being created. In west Harris, sites have been provided at a low price. Joint exercises have been undertaken with individuals, in which the community has provided the land but kept a share of the value in the long term through the house. Joint work has been done with housing associations on direct building and renovation of housing.

When community owners get a hold of land, housing automatically rises to the top of the agenda, because housing is the essence of how a community is sustained. When the land is community owned and therefore has a social purpose, there are lots of ways of bringing down the land value, which makes housing more achievable.

In the urban and rural contexts, the will to intervene is required. That comes back to the point about land being a public interest and a common good matter. That requires people to be prepared to intervene in the market.

The land reform review group's report says—it is so big that I do not remember where it says this—that a compulsory sale order could be applied to land. The report also talks about compulsory leasing of vacant properties. Ultimately, the will to intervene is required to make those things happen.

**Patrick Krause:** We really welcome the fact that self-build is mentioned in the report. A lot of crofters of my generation and older built their own houses. We have the croft house grant scheme at the moment, which replaced the crofters building grants and loans scheme. When the loans scheme was taken away, we pointed out that that limited people very much. As Derek Logie said, finance is really difficult to get anyway, but it is almost impossible to get it for self-builds and for croft land, so the loan part of the CBGLS was really important.

I want to highlight that the croft house grant scheme administrators and the local authorities are not encouraging self-build at all. For example, the croft house grant scheme stipulates what sort of house needs to be built, and it generally has to be a multiple-bedroom house. We want to see starter houses, so that young people can, if they are willing to put in the work, build something for themselves to the required building standards on a modular system. To make it affordable, the house can therefore start off small and gradually increase

in size. The current stipulations put self-build completely out of the reach of young people in the crofting areas.

**The Convener:** Good points well made.

**Sarah-Jane Laing:** I think that two things are involved in preventing landowners and communities from picking up the trowels. We created a grant scheme some years ago called rural homes for rent, which was available to both private and community landowners. The two things that stopped a number of the pilot projects going ahead and which continue to stop people picking up their trowels are prohibitive infrastructure costs in rural areas and restrictive planning, and I mean planning in its widest sense: the roads guys, the lights guys and that whole culture. That is what is stopping things.

There are lots of examples of where it is happening. I totally disagree with Peter Peacock that it is only a community land ownership issue. Certainly, when we look at well-managed estates—the research shows this—we can see that housing to meet local housing needs is central for landowners the length and breadth of Scotland. We therefore need to address prohibitive infrastructure costs and restrictive policies on housing in the countryside.

**Angus MacDonald:** I think that planning departments are the bane of all our lives at times.

**The Convener:** We have had the planning minister and the land minister here. Perhaps it is time to bring them both back, at the same time.

**Andy Wightman:** I agree with Sarah-Jane Laing's point about infrastructure and so on in the rural context. However, the biggest problem is that we have a completely flawed house building industry in the country. In urban areas, the majority of the market consists of volume house builders who make most of their money from land value uplift. That is speculative, and the house builders are not actually interested in building high-quality houses for people. One of the best things to read on this is referenced in footnote 17 on page 134 of the land reform review group's report: Alastair Parvin's "The Right To Build: The Next Mass-Housebuilding Industry", which won a Royal Institute of British Architects research prize. The book talks about moving the UK from a position in which less than 10 per cent of housing is self-build to a more normal European level in which 50 to 60 per cent of housing is self-build. That would mean that more of the available resources would go into building high-quality houses.

It is no coincidence that Passivhaus, which sets a German standard and had a 50th anniversary recently, found that the number of houses built to the Passivhaus standard in Britain was the lowest

in the whole of Europe. That is because volume house builders build most of our houses, whereas in Germany, France and Belgium it is people themselves who build the houses, so they want high-quality houses.

Land and land values are still an issue. In the rural context particularly, no housing plot should cost more than £10,000. There is no reason why it should cost more. If you found some way of doing that, people could invest their £70,000 or £80,000 that they can borrow in very high-quality homes instead of sinking it all into land values.

**The Convener:** Derek Logie, is that a solution?

**Derek Logie:** Yes, I think so. Sarah-Jane Laing was trying to get in when Passivhaus houses were mentioned, because the Dormont estate in Dumfries and Galloway built eight Passivhaus houses through the rural homes for rent scheme, which showed what an excellent scheme it was. The Knoydart Foundation, too, built houses through that scheme. That is the kind of thing that we are talking about rebooting.

I think that about a quarter of the pipeline projects for the Scottish land fund are from communities looking to do housing, which is a key issue for many rural communities in terms of keeping their school or shop open—it is a huge, key rural development issue.

Through the Scottish land fund, some communities, such as Ulva Ferry, have been able to negotiate land from an owner and buy it. They have not had to compulsorily purchase it. Ground was broken yesterday at Ulva Ferry to build two houses next to the school, which will do wonders for the school.

In Iona, which is not far away from there, the community spent 10 years trying to buy a piece of land from the Church of Scotland, which it eventually got. However, the community is £0.5 million short of the construction costs because of infrastructure and planning-related issues that mean that it has to dig out the site to lower the roof heights, for example. For five houses, over £100,000 is directly related to planning issues and £350,000 is related to infrastructure issues.

**The Convener:** It is surprising that they were allowed to build Iona abbey.

**Graeme Dey:** At the risk of going off at a slight tangent, I want to pick up on Sarah-Jane Laing's first point, on the security of tenancies in a rural context, and the unique situation of estate tenancies, not just tied properties. When people rent houses from estates, the arrangement is not like the normal arrangement in which, if, for example, someone rents a flat in Edinburgh, they will pay the market value and know what the rights and responsibilities of the landlord and the tenant



are. As you will recognise, people can pay relatively low rents on estates, but they can invest in the property and put in a kitchen and double glazing. They could live in the property for 20 to 30 years, but they will have absolutely no security that reflects the unique nature of the relationship. Do you accept that that issue perhaps needs to be explored to provide tenants in that position with greater protection?

**Sarah-Jane Laing:** There are probably two or three issues there. First, there is no such thing as an estate tenancy. Tenancies on estates have to operate in the same situation as everybody else does. They must meet a repairing standard and do everything else, whether they are tied, low rent, way above the market rent or whatever.

People can get repairing standard leases, which are more common in rural areas. They have to be at least seven years long, and there must be a clear agreement between both parties. That gives people more security than a normal short assured tenancy does.

The point about improvement is really interesting. I am quite disappointed that the private sector stakeholder group has never thought about the improvement side of things. All that is focused on is the repairing standard and ensuring that properties in Scotland are at the basic minimum.

Currently, council and housing association tenants have the right to improve and get back compensation for that. The regulation is very easy to understand. People know how things will work and what money they will get back at the end of the tenancy. I cannot see any reason why that approach could not be considered in the private rented sector in its entirety. As I said, estate tenancies do not operate in their own little world; they operate within the short assured tenancy regime or even the old regulated tenancy regime, as other tenancies do.

Improvements and ensuring that people are compensated for them can be looked at. However, improvements are limited in the council and housing association setting and must be approved by the landlord. That is one issue that we would look at. If somebody has had to pay to get their property up to the repairing standard—that is not improving it; it is getting it up to the basic, minimum standard—that is an issue and a failure of the landlord, who should be taken to the Private Rented Housing Panel.

**Angus McCall:** There is quite a complicated crossover between estate tenancies and agricultural tenancies. There is no requirement for a farmhouse to come under landlord registration, and there is no quality control on the state of farmhouses and farm cottages. It is up to the agricultural lease tenant to maintain and repair his

property. It is the landlord's responsibility to renew and replace, but there is no onus on landlords to make any improvements to tenanted properties, whether that is a farmhouse or farm cottage.

Therefore, unless a tenant can be assured of guaranteed compensation for improvements at the end of a lease, he will not undertake any great improvements to cottages. That is a real bugbear in the tenanted sector because, in essence, it means that landlords are often reluctant to give permission for tenants to improve their cottages or farmhouse, as that will not necessarily result in an uplift in rent. Therefore, generally speaking, a tenant has to improve his cottages and farmhouse on the expectation that he might not get any compensation for it if he leaves the tenancy. That means that, unless someone has a long lease, there is no way that they will make improvements to any of their houses.

That is a real problem in the tenanted sector. As we get into more short termism in leases, there is less and less investment in houses, farm properties and other buildings. The committee and the agricultural holdings legislation review group need to take that on board in their deliberations.

12:15

**The Convener:** We will have a final point on that issue from Sarah-Jane Laing and then move on.

**Sarah-Jane Laing:** Angus McCall is right that the property that is occupied by the tenant farmer does not have to meet the repairing standard, but every other property does, whether it is tied to the tenant farmer's tractorman or the tenant farmer sublets it. Those properties have to meet the repairing standard. We have raised that anomaly again and again—I raised it recently in my evidence to the Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill. However, I sensed a lack of interest in rural housing matters round that table. The interplay between houses on an agricultural tenancy and housing legislation that just does not understand agricultural tenancies is an issue. However, if a tenant makes improvements to houses, those are considered at waygo. That is clearly part of the compensation arrangements and is taken into consideration.

**Angus McCall:** We will need to disagree over that one.

**The Convener:** Okay. We move on to question 7, which is on patterns of rural land ownership. Jim Hume will lead on this.

**Jim Hume:** One of the group's recommendations is that there should be an upper limit on the total amount of land in Scotland that

can be held by a private landowner or single beneficial interest. The group recommends that the Scottish Government should bring that into law. Unfortunately, the group does not state exactly what the maximum hectareage should be. Does the panel think that the imposition of a statutory upper limit would make a substantial difference to land use? If so, what should the limit be? Should the measure apply retrospectively? Obviously, we have had problems with retrospective legislation in the past, so should it apply only to new acquisitions? Should there be punitive measures to accompany the implementation? Would it simply be a charter for lawyers to make money because larger landowners would perhaps subdivide and have a group of businesses owning the land? Is the proposal the right mechanism to address any issues that are out there, or should other approaches be taken? Discuss.

**The Convener:** Right. Have we got all day?

**Peter Peacock:** I am not sure that I will address the fine detail of that question but, to me, that is one of the most important recommendations in the report and it goes right to the heart of the public interest question that I touched on earlier. We already have, it is argued, the most concentrated land ownership pattern anywhere in the western world, and the evidence is that it is becoming more concentrated. Is that in the public interest and for the common good or is it not? To me, there has to be a way of asking that question. For example, a recent piece in *The Press and Journal* said that a landlord had briefed the paper about his intention to move from the estate that he currently owns in one part of the Highlands and buy up every other estate around it to create an “uninterrupted wilderness” at the heart of the Highlands.

Is that in the public interest? It could be but, on the other hand, it might not be. The important point is that we do not have any mechanism to formally ask ourselves that question. Ministers cannot formally ask that, and communities cannot make representations to ministers to formally ask whether that is in the public interest. To me, that is the essence of the recommendation. We can argue about the size of a holding, and size can certainly be a trigger for that question. Perhaps the mechanism itself has limitations. On the other hand, how do we ask that question in any given circumstance in Scotland? That is the important thing.

In continental Europe, limits on land holdings are not unusual, so we would not be doing anything terribly new in international terms if we moved to that. The United Nations and the G8, the big international bodies, have accepted voluntary guidance on land tenure, which is guidance to member states that has been approved by the

member states, and that specifically mentions limiting land holdings as one of the ways of securing the future of land in the public interest for food security reasons. There is therefore international support for the concept, if you like.

France has what is called the SAFER system, which means that a public interest question can be asked before the completion of any land transaction over a certain size, particularly involving agricultural land, and the local state or the national state has the opportunity to say whether it wants to intervene in the public interest.

To me, this is a fundamental question. I am not going to get caught up in arguing about whether the upper limit should be 100,000 acres or 50,000 acres or whatever. The power of what the review group has done is to raise the point and ask how we are to answer the question. Alison Elliot herself said that, although there may be other answers to the question, we must ask what happens as landholdings grow and become more concentrated and the “moral hazard” to the public interest increases. That is what is important and the review group’s recommendation brings that starkly into play. Society needs to find an answer to that. Are we simply not allowed to ask what is in the public interest?

**Andy Wightman:** I agree with everything that Peter Peacock said. It is curious that, in a crofting context, people are regulated to the hilt on five acres of bog and rock. If you buy a washing machine under hire purchase, you have to fill in four pages of details, but you can buy as much land as you like in Scotland, stash it in an offshore tax haven, and no one will ask any questions. That is a complete anomaly.

It is an important principle that if you have a finite land resource and you want to expand the number of people who own and have a stake in the land, it is perfectly reasonable to have a ceiling. If the committee wants a figure, I would stick it at 1 per cent of Scotland. I do not see why anyone should own more than 1 per cent of the country; someone already owns 1 per cent of the country. If you want a ceiling, start there. It seems perfectly sensible.

**Jim Hume:** What hectareage is 1 per cent?

**Andy Wightman:** I think it is 190,000 acres. Do the maths; sorry.

**The Convener:** Thank you Andy. We take your point. We must have a point at which to start.

**Nigel Miller:** The comment has been made that, once someone owns land, they have the ability to control land use and they have total power; if they have a large area of land, all those around them could be disempowered. I would challenge that whole concept. Landowning is a privilege, so

people should operate within certain codes of practice. If they operate within those codes of practice in the interests of the public and the community, and take the land use strategy into account, there is no problem.

This relates to Peter Peacock's comments about the public interest. If someone owns land and they operate it in the public interest by providing opportunities such as, from our point of view, long-term agricultural tenancies and operating to the highest standard, that is all positive. It is an opportunity for rural communities.

Our concern is not about the size of landholdings; it is about how they are managed and whether they fit the criteria and work in the public interest. When they do not work in the public interest, some sort of intervention, such as capping, makes perfect sense. I suppose that the strategy in Scotland might change from generation to generation. However, if landowners are operating for the benefit of the wider community and providing multiple benefits, the limiting recommendation is not particularly helpful.

It is a matter of intervening when landowners fail to deliver. In certain isolated communities, we have seen that there is a real danger that one landowner can have a big impact on a community's ability to function and that is where we should focus our attention. We should support landowners who invest, provide opportunities and deliver a spectrum of benefits.

**The Convener:** The committee is listening to your views so that we can ask the minister about those things.

**Nigel Miller:** There should be a code, so that people understand what is required of them.

**Dr Macleod:** The Scottish Government asked for radical and innovative proposals. The proposed system certainly comes into the radical category, although some people might debate whether it is innovative. I do not want to get into the debate about pulling the lever and finding that the answer is 42, in terms of land ownership. However, if the report is about anything, it is about trying to put into the public domain a set of principles that will shape and assist the land reform process as it evolves over the coming decades.

There is almost a tacit assumption—there certainly was in the Government's initiation of the review—that there are challenges and issues around the concentration of land ownership in Scotland. In that context—I agree with Peter Peacock on this—it does not seem at all remiss to ask the question whether the proposal can help to address that.

There may be different ways of looking at the issue. Last week, Pip Tabor talked about other

aspects such as fit and proper persons to own land, and the issues around that. Let us not forget that the legislation on community land ownership means that communities are put through significant fit-and-proper-organisation tests. We may be able to take forward certain aspects of that.

I do not think that the answer is 42, as someone once said, but it is a legitimate question to think about and explore in more detail.

**Sarah-Jane Laing:** I will try to be brief. As you can imagine, we have quite a lot of points that we want to make on this issue.

As Nigel Miller said, the issue seems to be driven by monopoly of control, and I think that the land reform review group is confusing scale with monopoly of control. We heard about East Lothian. If someone holds the only development land in East Lothian, they will control that far more than a landowner controls the 10,000 acres of the hill, rock and bog that was talked about before.

Peter Peacock referred to the large-scale ownership approach to deliver certain land use. That sounded far more like an approach for the John Muir Trust than one for private individuals, but again that goes back to what Nigel Miller said—the issue is the use of the land in the owner's hand rather than the ownership.

Scale is an issue, but scale can be a positive, which is why Stòras Uibhist and the Knoydart Foundation continue to manage the estates that were transferred to them on the scale at which they got them. The scale is seen as a benefit to them.

Returning to the arbitrary figure that was mentioned, it seems ludicrous to me that any limit would be placed on the amount of acreage. Someone could own the whole of Princes Street and a pocket of the highest level of residential property and be the only landlord in the new town, but they could not own 10,000 acres of Scotland. We have to be clear about what we are trying to deliver. Is it monopoly of control of land use or is it just a punitive measure to say that big is bad?

The negative comments about growing farmers worry me, too. As Nigel Miller said, we are being pushed to be viable, productive farmers, yet there is a criticism that farmers are selling land to other farmers. Surely that is a positive: we are trying to ensure the viability of our farming land.

I have a lot to say about this section of the report and we look forward to discussing it further with the committee.

**Patrick Krause:** I agree absolutely that there is an awful lot to say about this part of the report, although obviously this is not the time or the place. We will marshal our thoughts for the future.

The report talks about maximum ownership, but it also needs to talk about how many people use our land. I am not saying that there should not be a maximum limit on ownership; logically, there should be. As the report says, there are now some extremely rich people who could buy most of Scotland.

12:30

On how many people are on the land and using it, an argument that we always make for the crofting system is that, if you drive through certain parts of Scotland where there is no crofting, there is no one there and, when you drive through crofting communities, there are lots of people. However, the point is that, although the majority of crofters do not own their land, they have protection. That is the crucial point. The people who use the land need to be protected.

I am sorry to go into something that might come up in another section. It is significant that, as mentioned in the report, when the common agricultural policy started to become a lucrative way of earning money for people who owned land, tenants started to get pushed off the larger estates. That is a form of clearance that is happening now.

The control and use of land and who gets rewarded is at the heart of the matter. I am sorry, but I do not agree with Sarah-Jane Laing on multiple amalgamation. Farmers selling to farmers is about amalgamation. The land masses get bigger and bigger and more and more public money goes into fewer and fewer pockets. That is wrong.

**The Convener:** That is a strong point of view.

**Angus McCall:** I agree with Patrick Krause that control over land purchase is needed. Scotland must be the only country in Europe that does not exert some sort of control over who buys land. The accumulation of vast acreages is not helpful to rural society.

In many ways, I agree with what Nigel Miller said. The issue is not necessarily who owns the land but how it is used. We need to have some mechanism to examine how very large estates are being managed and determine whether they are being managed in the best public interest. Are agricultural opportunities being used as much as they could be? Is the land being used to its full potential? Are local communities able to do what they need to do?

In many cases, we find that areas where there is an estate monopoly are not necessarily managed to the best advantage. I have a lot of concern about the increasing disconnect between the owners of the land and the people who rent or

work on it. In many cases, the group in the middle who manage the land—the land agents—look far too much at the profit line rather than at what is in local communities' best interests.

We have lots of examples of land on large estates that is not being used as best it could be. A lot of that is being driven by the CAP and CAP reform, but far too much land is being used more as a sump for drawing in subsidy rather than used most productively.

**Peter Peacock:** I will make two points on the question of use and ownership that Sarah-Jane Laing and Nigel Miller raised. It is really good that the report debates that issue and says that it is not possible to address the land question in Scotland just by addressing land use, because there is a prior step. That is ownership, which largely determines the land use. In fact, the report quotes the James Hutton Institute referring to how the predilections of landowners largely determine what the use is. We support the land reform review group in drawing out that point.

My other point concerns what Sarah-Jane Laing said about what is wrong with the proposed system. It is dead easy to pick out all sorts of technical difficulties that there might be with the proposal, but on the other hand if it is not this proposal, which proposal is it? The challenge to those who oppose any intervention is to say whether there is a public interest question that society can ever ask. To me, that is the key issue. Are we saying that there are simply no circumstances, ever, in Scotland in which we are prepared to ask, "Is this land managed in the public interest?" That is not a credible position, but I have no doubt that there are all sorts of ways of answering that question. That is what we need to get at.

**Willie McGhee:** To echo Peter Peacock's point, we do not have enough diversity in land ownership to see the various models of land use. We have this flush of community ownership, which, on current evidence, we are assured is producing more housing and more activity. We are not quite sure where that is going.

The report, and the zeitgeist, if you like, in Scotland at the moment provide a real opportunity to explore new ways of managing land. I agree with Peter Peacock that land use and land management are very difficult to separate.

Are we moving on to agricultural holdings after this?

**The Convener:** We will come to that after taxation.

**Willie McGhee:** In that case, I have nothing more to say at the moment.

**Jim Hume:** I will ask a question on taxation in a second, but I just wanted to sum up. Thankfully, Andy Wightman was the only person brave enough to state an actual figure—190,000 acres, which I think is about 77,000 hectares. However, no one really touched on the issue of whether that should be retrospective or new acquisitions. It is very unlikely that someone will be coming to buy 190,000 acres but I suppose that there are some, although not that many—less than a handful, I would have thought—who already have 190,000 acres.

Peter Peacock mentioned other European countries. I believe that in at least one Scandinavian country, the limit on land holdings is about 700 hectares, which is below the average size of a Scottish farm. Obviously, there is quite a variety. We would need a whole week to discuss it and I realise that we must get on, but I thought that it was worth summing up on that point.

**The Convener:** Can we leave that on the table?

**Jim Hume:** Yes.

**The Convener:** Thank you for making that point.

**Alex Fergusson:** May I make one point, very briefly? The word “diversity” has been mentioned and I do not think that we should lose track of that. As I tried to draw out last week, probably very unsuccessfully, we have some fantastic examples of large estates working for the public benefit. We also have examples in which they do not work for the public benefit.

One of the things that bothers me is how we determine centrally what the public benefit is. I appreciate that there is an argument about the diversity of land ownership. I would argue that we have an enormous diversity of land ownership in this country, which is a good thing. There are good landowners and there are bad landowners. There are good tenant farmers and there are bad tenant farmers. There are good owner-occupiers and there are bad owner-occupiers. That is all part of the rich diversity that makes Scotland the extraordinary country that it is.

If you believe that limiting the size of land that anybody can own will stop there being good examples and bad examples of land management and public benefit, you will be hugely disappointed.

**The Convener:** We have heard from Patrick Krause that we have a regulated market in crofting. It has always struck me that, in the larger landowner world, we do not have a regulated market for land ownership as a whole.

Jim Hume has a question on land taxation payments and markets.

**Jim Hume:** Everybody loves taxation, of course.

**The Convener:** Me especially.

**Jim Hume:** The group thought that the current fiscal regime needed to be looked at to encourage an increase in the number of landowners; I presume that it means smaller landowners. One concern is how that affects the tenancy market, which is very important for new entrants. Very few new entrants could start off as a landowner, so I presume that we have to think of the future.

One of the recommendations was to end the exemption of agriculture, forestry and other land-based units from non-domestic rates. I appreciate that the Government has ruled that out, but we must remember that we are scrutinising the group’s report. It also mentioned land-value taxation and species-specific sporting rates. It would be interesting to hear the panel’s views on the impacts that the proposed changes would have on rural land use.

**Andy Wightman:** This is an important part of the report. It highlights a number of issues that have never been subject to much democratic scrutiny.

When the Scottish Affairs Committee was considering this question, a witness from the Institute for Fiscal Studies made an interesting comment, which was that generic reliefs are not targeted and the costs of those reliefs is never properly totted up, as the recent National Audit Office report on tax reliefs pointed out. They further said that the original purpose for those reliefs is lost in time and the reliefs get capitalised into land values which, understandably, are defended by those who enjoy the reliefs because removing them would lead to a drop in land values. We are in a difficult place with some of the issues, but they need a critical examination.

There is no longer any rationale for exempting any non-domestic property from rates. The original reason why that was done in the 1920s—in England, it was done in the 1890s—was because agriculture was having a tricky time. However, that relief just became a built-in element, until it was completely abolished in the 1950s. It seems to me to be extremely unfair from the point of view of equity that hairdressers, cafes, bus depots, garages and so on in a small town are paying substantial rates of 47p in the pound—the small business rate relief scheme notwithstanding—yet large areas of land in big farms and commercial forests are paying nothing towards local taxation.

The other interesting thing about this recommendation is that, if you introduced non-domestic rates to the properties that are currently exempt—you would have to do it in a phased way; you could not do it overnight, and you might have to take quite a long time to do it—you could cut the

bills of most payers of non-domestic rates, if you were to operate a system in which there was a finite yield from non-domestic rates. That would be enormously attractive to rural and urban businesses.

I am also talking about the large exemptions that exist for unused industrial property. When that building in Glasgow went on fire a few years ago, it cost a lot of money to put out the fire and to get the courts to adjudicate on insurance claims and so on. Had the owner been paying rates, they would have been paying about £750,000 to Glasgow City Council. The owner paid no rates, yet they expected the fire service, the police, the courts system, this Parliament and others to operate to protect their interests.

That is an important point, and the report is arguing that we should review the situation. It is not making a clear recommendation on the issue other than saying that we should review whether the exemptions are still justifiable.

**Willie McGhee:** The forest policy group welcomes the recommendations that are made in this section, specifically in relation to paragraph 20 and sporting rates.

At the moment, the red deer population in Scotland is around three times higher than it was at the end of the second world war. The carrying capacity of the land has been far exceeded. We believe not only that that causes huge habitat and ecological damage but that there is also a large cost that is being borne by taxpayers, which comes in the form of fencing, tree protection and stalking. People who are harvesting wild deer are, essentially, allowing others to pick up the tab for their sport. We believe that sporting rates would be one way to deal with that. We also believe in licensing. This is slightly to one side but we think that, in order to tackle issues such as wildlife crime, sport should be licensed.

The rates would enable local authorities and, depending on how they were collected, the public interest—to use Peter Peacock’s phrase—to reclaim some of the costs that are currently being paid for deer damage.

12:45

**Nigel Miller:** This is obviously a key area. I recognise that the many of the issues are reserved, but I think that it is an area that the committee should address. The reality is that tax and reliefs will drive behaviours. Therefore, the committee has a big role to play with regard to how best practice can be driven by the tax regime. My view is that those who operate best practice should benefit from reliefs and that those who fail to deliver wider benefits should not. That is a very political question.

The reality is that the measures have been considered in relation to the targeting of estates and larger farms, but the ripple effect would impact on all family farms. With regard to land tax and issues at that level, I appreciate that the Government has already intervened on business rates, but let us consider these projected figures from HSBC—they are not our figures.

Spring barley is a pretty crucial crop in Scotland, because of the whisky industry. The projection for the margin this year is £26 per hectare at £165 per tonne, and we will go into a negative margin if it goes to £130 a tonne. With regard to the whole-farm projections for uplands stock farmers with significant cattle herds and big sheep flocks, the net profit that is projected after support is £14,000. Hill beef and sheep units that are on higher land are looking at a loss situation this year.

The reality is that, if you push the tax-take from those farms, their viability and continuity will be in question. Therefore, before you look at tax, you should look at the impacts on food, jobs and communities, and you will see that they will be significant.

Let us consider agricultural property relief, which is meant to fragment land use. We understand that fairness would suggest that there should not be a protection of heritable land but, in reality, without that we will end up with fragmented holdings, which will probably not be viable in the future and will lead to real problems with regard to getting our next generation on to the land.

Those are pretty crucial issues not only for farming but for the sort of countryside that we have and for our food industry. You therefore need to consider the issue on two levels. There are powerful incentives that can be used but, if they are targeted wrongly, they could be quite dangerous.

**Patrick Krause:** In our submission to the group, we said that we agreed with the idea of a land value tax—I just want to confirm that point.

The land use payments section, in section 25, contains some good context about the common agricultural policy. Under paragraph 36, the group points out that there is

“an increasing concentration in the ownership of farms on Scotland’s better agricultural land ... The Group also considers that the value for money in terms of public benefits from public funds for aspects of the CAP agricultural subsidy schemes, should be much clearer than is the case at present.”

That does not really get transferred into the recommendation on the issue, which is at paragraph 43, so I wanted to highlight that issue.

The issue is at the heart of a lot of the discussion that has been going on about CAP

reform. It has its place there, but it also has a place with regard to the wider aspect of reforming land use in Scotland. It is unfortunately the case that, often, people do not equate CAP funding with public funding, but money from the CAP is public funds. Therefore, the point about having a measure of how well public funds are used for the public interest is important to the whole issue. At the moment, the CAP leans towards providing more money to those who already have money, rather than being directed towards the common good.

**Dave Thompson:** Obviously, the whole issue of taxation is important and complex. The Scottish Government has ruled out moving towards removing the exemption from non-domestic rates.

The Scottish Affairs Committee's investigation has been very good so far with regard to those issues, but it says that it has more work to do. Perhaps we should ask it to take a close look at all those reserved tax issues, while we look at the devolved issues. We could work with the committee to come to an agreement on some sort of clear way forward.

There are so many taxes—land value tax and so on—that, if we are going to operate a tax system properly, we need to be able to adjust rates by increasing some and reducing others to get the sort of balance that is needed. There is a lot of work to be done, and I would welcome the opportunity to work with the Scottish Affairs Committee on the matter. Of course, we might not need the committee after 18 September, but there we are.

That is the main issue. What do people think about a twin-track approach between this committee and the Scottish Affairs Committee?

**The Convener:** The last two people who are going to speak on this issue are Sarah-Jane Laing and Peter Peacock, although Jim Hume will no doubt want to come back in on some of the points.

**Sarah-Jane Laing:** I agree with what Patrick Krause and Nigel Miller said. The various forms of tax relief and any payments are there to deliver public good. If our tax regime is not delivering that public good, there is nothing to fear in looking at it.

We need to ensure that agricultural property relief, business property relief and all the other levers are delivering public policy, which is why they were put in place, but our examination should not be driven by an underlying dislike of the people who receive that relief.

Andy Wightman referred to the lack of democratic review of non-domestic rates. The Scottish Government has just reviewed that area with a full consultation and published its findings,

so I am not quite sure why Andy feels that there was a lack of democracy in the process.

Again, if we are going to look at non-domestic rates, we should just do so. There was no economic impact assessment in the report—I could not tell you how much land would be classified as “sporting” under the sporting rates, and I am not sure that that information appears anywhere in the report. We should look at the extent of that and consider the public money involved and the potential impact on any businesses.

We should do the same for agriculture—we should map the area and try to understand what the economic impact of any change would be.

**The Convener:** Land mapping suggests itself to me.

**Peter Peacock:** On a point of principle, it would be very odd for a comprehensive report on land reform such as this one not to mention taxation. As Nigel Miller said, taxation and changes in taxation drive behaviours, and that is what the report is about, so it has to raise the question.

The political landscape is littered with the bodies of politicians who made the wrong decisions about taxation, so I can see why the issue is difficult for people. However, in principle, you must be prepared to open up those questions if you want to bring about greater diversity in land ownership. I do not know whether that should involve non-domestic rates, sporting rates, inheritance tax, capital gains tax or land value tax—there is a huge debate to be had in that regard. The important thing is that the debate moves forward.

Dave Thompson has a point. Whoever is responsible for taxation must ensure that those matters are looked at with regard to how we achieve our objectives for land.

**Jim Hume:** There were quite a few points in there—we could do with another week on the subject.

I was quite concerned, when the review group came to the committee last week, to hear that it had not considered the impact of some of the proposed changes on agriculture, which is the major use for rural land.

Andy Wightman said that farms do not pay any local tax at all, but quite a lot of council tax comes from rural areas. Going back to a previous question, there is a bit of an anomaly in that a tenant in a farmhouse does not have any rights with regard to their house as it is seen as a commercial property, but they pay local income tax and council tax—usually quite high council taxes, because farmhouses are generally quite big.

**The Convener:** That is complex, indeed. We will move on to agricultural land holdings, and Dave Thompson will lead.

**Dave Thompson:** The report recommends reducing the complexity of crofting legislation. I know that there have been calls to consolidate the legislation but that is a wee bit different to reducing its complexity, so I welcome views on how we would go about that. It is a massively complex area at the moment. There is the issue of selling off Government crofting estates at less than market value and there is also the need to improve part 3 of the 2003 act. I would like to get your views on those crofting issues.

On tenant farming issues, where should the agricultural holdings review group be going? There are several recommendations in the report. Should we be picking up on them and making some recommendations in relation to the suggested conditional right to buy and the removal of the requirement to register interest so that it is automatic? Does that really go far enough? What are people's views on that?

**The Convener:** Let us take the crofting bit first.

**Patrick Krause:** There is probably quite a quick answer to the question of how to reduce the complexity of crofting law. A tweet from Jim Hunter is quoted in the report, and it basically says that we should scrap all the crofting legislation and start again with a clean sheet because every successive amendment makes it ever more complicated.

My view—it is probably fairer to say that it is my view and the recommendation that I make to my organisation rather than my organisation's view—is as follows. Were we to start a system of crofting now, would we design the system of legislation that we have? The answer, clearly, is no—of course we would not. Logically, we should start with a clean sheet.

The Crofting Reform (Scotland) Act 2010, as amended, as amended—or the Crofters (Scotland) Act 1993, as amended, as amended, as amended—is being looked at and a sump is collecting the anomalies in the law. People started off with the view that it was not about amending the current legislation; it was about trying to work out where to tweak it.

Having participated in the collection of the anomalies in the sump, I think that people now realise that the sump is so big and so full of very serious flaws in the law that we should be recommending that we start again. I know that it is constantly said that Parliament will not want to touch crofting again, but it has to touch crofting again, because the 2010 act made things worse rather than better.

The selling of the crofting estates is an interesting issue—it is one that the group came back to us on. The group asked: why do crofters not use the Scotland Act 1998 to buy the estates that are owned by the Scottish ministers? To an extent, it is because tenants on the estates have a very good landlord and they have the protection of crofting law, so why would they want to change things? Whether estates could be sold at under their market value is a huge question. I do not know the answer to it because the ogre of state aid rules is always wheeled out at some point when there are discussions about that and it seems to be really difficult to get definitive answers about state aid.

**The Convener:** We will be asking the minister about state aid and Treasury rules next week, without a doubt.

**Patrick Krause:** On part 3 of the 2003 act, there are particular points to discuss, and I think that the report covers them all. The main points are things such as the complexity of mapping that the act asks for. In no other sphere is that complexity of mapping ever asked for. Registers of Scotland does not have the kind of maps that it is asking crofters to produce; it is a complete nonsense.

As we said and as is said in the report, different constitutions need to be looked at for the structure of the organisations referred to in parts 2 and 3 of the 2003 act. However, an important point that did not come up in the report but that we made in our submission is that, no matter what their corporate structure is, the organisations need to be democratic. For example, third sector organisations must have a rollover of directors. For some reason, community bodies missed out on that. It would be good to consider how to implement what is suggested.

13:00

**The Convener:** Right. Thank you. I call Peter Peacock and Calum Macleod, but I ask them not to go over the same ground.

**Peter Peacock:** I will make three very quick points. Although it would be absolutely great if we could simplify crofting law, I hope instead that we can pass the task to the next generation and that I do not have to write any evidence papers on it, because it is a very difficult area. It is, though, an objective that we should certainly pursue.

**Graeme Dey:** We could get another committee to lead on it.

**Peter Peacock:** Indeed.

On the possibility of selling off crofting estates at less than market or nil value, my view is that that should happen. In fact, the Scottish public finance



manual technically permits it, but the incentives for the person who has to make the decision are actually disincentives. I know that the Scottish Government is looking at how to interpret that and make it work, but, in principle, it should be possible.

That said, I stress that we should not seek to force crofting communities to take estates; the decision to do so must be absolutely up to them. If that is their clearly expressed will, every facility to help them should be given. However, we cannot force people to do that. We are strongly of the view that no community, crofting or otherwise, should be encouraged to go down that road against their will. They have to want to do it.

Part 3 of the Land Reform (Scotland) Act 2003 is necessary to simplify the mapping requirements to which Patrick Krause referred, which are completely tortuous. There is no particular reason for them to be there; they are not required for any other facet of our land transactions. However, the ultimate power of part 3 is that it is vital for the actual right to buy, because it is giving rise to the negotiations that are now taking place, particularly in the Western Isles, on the transfer of significant areas of land into community hands. Such things are being negotiated, but the power of the act lies in the background to help facilitate that process.

**Dr Macleod:** On the question of simplifying crofting law, I simply note that, the last time that I was here, I had the eminent crofting lawyer Derek Flynn by my side. As he is not with me now, I will skip that particular question.

In relation to the transfer of crofting estates, the only organisation that has undertaken such a transfer is the West Harris Trust, and I think that it found the process akin to something from a Kafka novel. It had to deal with challenges in relation to the ballot and there were all sorts of issues about public money swilling from one organisation to another, which does not seem at all sensible. However, I think that, if the transfer of crofting estates could take place at below market value, there would be a very strong public interest motivation to do it. A loosening of state aid would certainly be relevant in that respect.

The only example of the process in part 3 of the 2003 act that we have seen thus far is that of the Pairc estate. If the West Harris Trust's experience was like something out of a Kafka novel, what happened with the Pairc estate was, frankly, off the scale.

There are a number of big issues around mapping, but another issue that I think is important in the general sphere of this discussion with regard to land reform is human rights. There was a human rights challenge over the legitimacy of the attempted Pairc buy-out. The buy-out itself was

found not to be in contravention of those rights, but it sends a very strong message that there are broader human rights issues beyond an individual's human rights to take into account. Obviously, an individual's rights are very important, but the broader issues of land reform also have human rights implications.

**Sarah-Jane Laing:** With regard to crofting landlords, Dr Jean Balfour chairs our crofting group, as Patrick Krause knows. I always bow to Dr Balfour's greater knowledge of crofting; she tells me that, as I am a lowlander, I will never understand it. I have to say that crofting landlords are completely on side with us on the need to simplify the system and ensure that it is fit for purpose.

Looking at some specifics, I note that paragraph 34 in section 26 of the report refers to the current ridiculous situation in which an application is thrown out if someone makes a minor error or omission in it. We firmly believe that that should be rectified without delay. It has caused a number of willing seller and willing buyer transactions to fall at the first hurdle, and the cost to the people involved has, as Patrick Krause has pointed out, been horrendous. That issue can be addressed straight away.

Everyone has made it quite clear that we can all take some lessons from the Pairc case on how not to do things, and that would include the approach to transparency and the speed of decision making by Scottish ministers, which the case shone a light on. If we are to move forward on land reform, that issue must be addressed in any element, whether we are talking about part 3 of the 2003 act or the extension of rights under part 2.

**The Convener:** Before we move on to agricultural holdings, I will bring in Angus McCall and Willie McGhee to comment on this section of the report.

**Angus McCall:** I want to make a small point about the anomalous position of small landholders who fall between the two stools of agricultural holdings legislation and crofting law. The fact is that, after 1931, no changes were made to the legislation in that respect until the Crofting Reform etc Act 2007 and the Crofting Reform (Scotland) Act 2010, both of which tried to make a pathway for small landholders to convert to crofting status. As I am sure the committee will appreciate, most small landholders missed out on having their property designated as crofts because they were in the wrong area. For example, the Duke of Hamilton did a very good job of ensuring that the island of Arran did not get crofting status.

However, what has emerged from those acts is totally unworkable legislation in which the process of converting a small landholding to a croft,

particularly if the landlord is unwilling, is almost impossible. The two small landholders who have tried it have had to give up and try another route, and we recommended to the land reform review group that instead of going down the crofting route those small landholders should have the ability to purchase their landholdings directly. In fact, that recommendation was made by Sir Crispin Agnew when he came with us to Arran to talk to small landholders.

I am glad to see that the review group has recommended a statutory right to buy for small landholders, which is the only sensible thing to do. It has also recommended that that right should function on the same basis as a crofting purchase—that is, at 15 times the annual rent. That is far more sensible than the current convoluted process of trying to ascertain the value of small landholding status and crofting status; converting to a croft; and applying to buy the land. I commend the review group's recommendation to the committee.

**The Convener:** Thank you. Willie McGhee and Patrick Krause will finish on crofting.

**Willie McGhee:** With regard to section 28 of the report, on tenant farms, the forest policy group believes that there is an omission in respect of the tenant farmer's right to have woodlands and trees on a tenanted farm. We are currently undertaking a piece of work on the willingness or otherwise of tenant farmers to put more trees and manage more woodlands on tenant farms if the situation were otherwise. Nigel Miller mentioned some work that is going on just now, and we will take that point up with NFU Scotland and the Scottish Tenant Farmers Association.

**Patrick Krause:** I want to make one last point, which is about the identification of the parties involved in land buy-outs. Crofting law defines a crofting community as one thing, while the 2003 act defines it as something else, and that needs to be sorted out.

Under part 3 of the 2003 act, a crofting community cannot make an application to buy or register an interest in buying under part 2. The fact that that community has to redefine itself and set up a whole new community trust is a really strange anomaly that also needs to be sorted out.

There is also a problem with identifying landowners. Andy Wightman mentioned how difficult it can sometimes be to track down what company owns land. In Shetland, for example, land that was sold at auction was resold so rapidly that it was never registered, and the crofters there have no idea who their landlord is. That, too, needs to be sorted out.

**The Convener:** There are quite a few of those examples.

On Dave Thompson's question to the agricultural sector, the land reform review group has made recommendations and the agricultural holdings review group will be in a position in which it should probably listen to it. I think that Nigel Miller and Angus McCall will want to lead on that.

**Angus McCall:** From our perspective, the land reform review group has made some commonsense suggestions. It has not gone into any detail—we would, of course, not expect it to have done—but what it has broadly suggested chimes exactly with our thinking, and we fully support it. We hope that what the group has said about agricultural holdings will be seen as the context in which reform should be carried forward by the agricultural holdings review group.

There are two separate reviews, one of which is independent and one of which is ministerial led. I certainly hope that the agricultural holdings review group, under the cabinet secretary, will pay particular attention to the land reform review group's recommendations.

The land reform review group's first recommendation was to do away with the need for the registration of interest to buy land. For the life of me, I cannot understand why that was ever brought in in the first place. The area of land is usually fairly well defined, and we think that the requirement to register is superfluous. Registering interest does not guarantee the accuracy of the registration, so a landlord can put the farm on the market and then challenge the tenant's registration. It therefore offers no guarantee to the tenant that his pre-emptive right will be exercised.

There are around 1,300 registrations in the land register of Scotland, and only around 950 of those are still live. Some of them will have dropped off because of the requirement to reregister after five years and some will have dropped off because of challenges.

The majority of tenants would take up the offer of a pre-emptive right to buy their farm, but many of them have not signalled their interest because of the effect on the relationship with the landlord. The need to register an interest should not exist, and I welcome the suggestion that has been made.

On all the other comments by the land reform review group, it is a bit like the situation with crofting: we are really looking at perhaps starting again with a clean sheet. We have incredibly complicated agricultural legislation—indeed, it is nearly as complex as the crofting legislation. It has suffered from years of amendments. If we try to look up a legal point, we need around six fingers to put in six different books to cross-reference.

We need some form of perpetual tenancy for the secure Agricultural Holdings (Scotland) Act 1991

tenancy sector. The land reform review group has indicated that direction of travel with talk about assignation and so forth. We need to have more flexible models for renting land to allow in new entrants. We also need to have a conditional right to buy inserted, which would not necessarily apply to the whole farm but would give people the ability to purchase a house and steadings or other bits that are needed for a diversification enterprise and so forth.

13:15

**The Convener:** That is plenty to be getting on with, Angus. We do not want to curtail debate, but it is important that we hear from each of the sectors.

**Nigel Miller:** Our position is fairly close to Angus McCall's. We support an automatic preemptive right to buy and we support the recommendations going to the agricultural holdings review group. We think that that process is working well.

**The Convener:** That is good.

Alan, do you want to respond? We have not heard from you for at least an hour. That is not your fault.

**Alan Laidlaw:** I was being brief, as requested, convener.

Angus McCall's point about the flexibility and the functionality of the legislation is key, because the last thing that anyone wants—this was the issue on which greatest concern was expressed at last week's meeting—is to create a charter for lawyers. Whether we are talking about crofting or ag holdings, the issues get very complicated very quickly. We need to ensure that all legislation in the area is fit for purpose for everyone involved, because we are seeing a delay in getting what both parties want done.

Flexible and pragmatic fit-for-purpose legislation would be hugely beneficial for the sector and for relationships. I firmly believe that landlords and tenants must work in partnership to deliver the most that they can from the interest. At times, the legislative process means that quite a difficult dynamic can develop.

On the right to buy, that is a matter for the land reform review group to progress. We just need to be realistic about that because, as Patrick Krause said, not everyone wants to buy their asset or to take on the financial commitment of a purchase. We need to ensure that there is no one prescription for everyone. Others have fairly robust views that that is not the only holy grail.

**Alex Fergusson:** I have a very brief point to put on the record. I am slightly disappointed that the

land reform review group looked at agricultural holdings, just as I am slightly disappointed that it made recommendations on deer management and wild fisheries, because those are all areas in which considerable work is being done by specific expert groups. I understand why the land reform review group wanted to mention those issues, but it would have been more helpful and more conducive to a positive outcome had it simply said that it recognised that a lot of work was being done in those areas and left it to the specialist organisations concerned to report on them. I do not expect that position to be wildly popular among those at the table, but I wanted to put it on the record.

**The Convener:** Who knows?

I bring in Sarah-Jane Laing.

**Sarah-Jane Laing:** I do not want to get into specific technicalities. As others have said, we are feeding those into the ag holdings review and I am sure that we will be back again very soon to discuss the agricultural holdings review group's interim and final reports.

In reading through the section on agricultural land holdings, I was unclear about what the land reform review group is trying to deliver. Is it perpetual tenancies? Is it churn in the sector? Is it turning tenants into owner-occupiers? Why would the group want to turn tenants into owner-occupiers if it says that the tenant farming community tends to score highly on the social measures that it wants to be achieved? The vision or the picture of what it is trying to achieve is not clear, so the section on ag holdings seems to include contradictions.

**The Convener:** I think that we have now exhausted the ag holdings issue.

I want to sum up on the recommendations on timescales and interrelated recommendations. We have heard a lot of ideas and strong evidence about whether land ownership is the key determinant of how land is used. We are looking for realistic timescales for the implementation of the land reform review group's recommendations. Some recommendations relate to one another, and another issue is the cumulative effect of implementing the recommendations. We must think about the future and how all that will pan out.

There is a process issue. Does anyone have brief final thoughts on how we should proceed? I suggest that we need several workstreams. Perhaps the witnesses might want to concentrate on that approach for our very interim questioning of the minister.

**Sarah-Jane Laing:** I agree that the report cannot be tackled in its entirety in one stage. As well as workstreams, we recommend a matrix

approach that involves things that we know that we can do now, medium-term things and things that will take a long time to think through.

**Peter Peacock:** Some things could be advanced, particularly things in the part of the report on community ownership, because the community empowerment bill will amend the 2003 act. Our view is that the Government should get on as quickly as it can with consulting on that and that it should use that vehicle to maximum effect, although we must tease out what maximum effect is. Under the bill's timescales, I see a number of things that the Government could have an impact on, particularly in relation to community ownership.

In relation to the other stuff, things will require to be considered and worked on. Different timescales will be attached to them—for example, the report recommends that some issues should go to the Scottish Law Commission.

It is important that the report is not kicked into the long grass and that we keep it as a political—with a small “p”—matter that requires to be dealt with. For all the reasons that the review group set out, the report is about change for the common good, so we must not allow it to disappear off the agenda.

I hope that, over the next week or so, the minister will set out how the Government wants to handle the report. We can all then respond accordingly.

**The Convener:** That is useful. I always come back to the diagrams on page 176—one is about the prices of different types of land and the other, which is even more important, is about the price of land in comparison with other commodities. That second diagram shows that, in the past 10 years, gold has been the best thing to invest in, followed by Scottish and English farmland and the FTSE 100. United Kingdom house prices are at the bottom. If Scottish and English farmland provided the second-highest returns, that clearly suggests that land reform is urgent, because that price increase cannot relate to the land's economic value.

That is why questions about the sale and use of land are interrelated. I am making bold statements but, when I look at that diagram, I see no other outcome on the question whether the issues should be dealt with separately. Scottish Land & Estates says that the issue is all about how land is used, but it is not. It is clear that land has a huge value, so we must have a balance. I hope that we can ensure that the minister provides a clear timetable, as early as possible. The witnesses will have a great opportunity to contribute to the next stage.

I thank you all warmly for the way in which you have ensured that we have your points of view to

pull over. I hope that we will have a chance to get the *Official Report* early this week, because there will be a lot in it.

The meeting has been long. I thank all those who have attended. Our next meeting will start at 9.30 on 11 June, when we will take evidence from the minister on the land reform review group's final report and interview the UK fisheries minister, George Eustice, about marine and fisheries issues.

*Meeting closed at 13:24.*

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

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