



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 20 August 2014

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**Wednesday 20 August 2014**

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**23<sup>rd</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:**

Hamish Lean (Agricultural Holdings Legislation Review Group)  
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)  
Iain Mackay (Agricultural Holdings Legislation Review Group)  
David Mallon (Scottish Government)  
David Palmer (Scottish Government)  
Andrew Thin (Agricultural Holdings Legislation Review Group)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

Wednesday 20 August 2014

[The Convener opened the meeting at 09:30]

#### Subordinate Legislation

**The Convener (Rob Gibson):** Good morning and welcome to the 23rd meeting in 2014 of the Rural Affairs, Climate Change and Environment Committee.

I remind everyone present to switch off their mobile phones and so on, apart from people who use tablets, which are the only electronic equipment that should be switched on.

I note with great sadness that the committee learned that Professor Laurence Mee passed away suddenly last Wednesday. He had been due to give evidence on the marine protected areas at last week's meeting and was highly regarded and respected as an expert in his field. Our sympathies are with his family, friends and colleagues.

#### **Aquaculture and Fisheries (Scotland) Act 2013 (Specification of Commercially Damaging Species) Order 2014 (SSI 2014/176)**

#### **Protection of Seals (Designation of Haul- Out Sites) (Scotland) Order 2014 (SSI 2014/185)**

**The Convener:** The first agenda item is consideration of the Aquaculture and Fisheries (Scotland) Act 2013 (Specification of Commercially Damaging Species) Order 2014 and the Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014.

Members should note that no motion to annul has been received in relation to the orders. I refer members to the papers. If there are no comments, is the committee agreed that it does not wish to make any recommendations in relation to the orders?

**Members** *indicated agreement.*

## Agricultural Holdings Legislation Review Group

09:32

**The Convener:** Our second item of business is evidence from the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead, who is the chair of the Scottish Government's agricultural holdings legislation review group, on the interim report that the group has produced. Today's session follows an evidence-taking session with stakeholders two weeks ago.

We welcome the cabinet secretary, Andrew Thin, Iain Mackay and Hamish Lean. All of them will be able to take part, as they have done before. I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Thank you very much. Good morning to the committee. It is a pleasure to be here with you this morning.

I am pleased to have the opportunity to make a few opening remarks about the review group's interim report. Before I do that, I ask my colleagues to say a little bit about their backgrounds and their roles in the group. I am grateful to the talented and hard-working members of the review group, who have helped to make the report so effective.

**Iain Mackay (Agricultural Holdings Legislation Review Group):** I am a tenant farmer on the Isle of Mull. I am also a member of NFU Scotland and work with the new entrants groups in the NFUS and the Scottish Government.

**Andrew Thin (Agricultural Holdings Legislation Review Group):** I fulfil a wide range of roles in rural Scotland and, I hope, bring a broader perspective to the group.

**Hamish Lean (Agricultural Holdings Legislation Review Group):** I am a solicitor in private practice based in Aberdeen. I have been accredited by the Law Society of Scotland as a specialist in agricultural law since 2000.

**Richard Lochhead:** We welcome the opportunity to provide the committee with an update on the progress so far. The interim report was published on 20 June and marked an important milestone for the future of tenant farming in Scotland. I am pleased with the warm response that we have received from all the stakeholders. They, in turn, have played an important part in the success of the review so far.

Over recent years, we have all aimed to support the tenant farming sector and improve relationships between tenant farmers and their

landlords. Although some changes have started to work, the committee knows as well as we all do that tenant farming is a complex and emotive area in agriculture and that agriculture itself is not a static industry. Tenant farmers and, in particular, those who wish to join the proud tradition of tenant farming in Scotland still face many practical problems. Tenant farming is a cornerstone of Scottish agriculture, and it can also play a role in supporting vibrant and sustainable rural communities across the country. That is why I as minister am absolutely committed to bringing forward better solutions.

I knew that the task was never going to be easy—indeed, my four aims for the review group were ambitious and very challenging—but we have already worked hard at meeting them and delivering our vision for a dynamic sector. Of course, our vision is of a tenancy sector that gets the best from the land and the people farming it, provides for new entrants and forms part of a sustainable future for Scottish farming.

You will be aware that, as part of the process, we set eight aspirations for the future of the tenanted sector. I will not go through those aspirations just now, but I know that the committee discussed them at its recent evidence session. We have engaged with the industry to ensure that we have support for those aspirations and, since then, we have focused on identifying the barriers to achieving them. During the process, we met and talked to more than 300 people and received nearly 80 pieces of written evidence; we also held open meetings in Islay, Bute, Ayr, St Boswells, Dumfries, Stranraer, Inverness, Blair Atholl, Glenlivet, Turriff, Inverurie and Perth. As members will see, those meetings, of which I attended only a small number—the review group attended most of them—have taken place right across Scotland and have been a very important part of the process.

On our visits, people took time out away from the spring lambing, the calving, the silage making and whatever to talk to us, and many who wanted to express their views opened their homes to us. Indeed, conversations often happened behind closed doors because of the nature of some of the issues that people wanted to raise.

We are very grateful to the stakeholder organisations, which have discussed the issues very frankly not only with us but with each other and have made great efforts to facilitate the visits and wider engagements that have taken place across Scotland's farms. Their willingness to engage with each other and to have honest and frank discussions has been one of the most positive outcomes of the process.

A great example of that proactive approach is the joint initiative on rent reviews that has been

announced by NFUS, the Scottish Tenant Farmers Association and Scottish Land & Estates and which of course was in the news just a couple of weeks ago. Andrew Thin played a very important role in brokering that agreement, which aims to bring stability and peace of mind to those involved in the rent review process in light of the very prominent uncertainties that have been reported in the news recently. I strongly welcome the dedication and co-operation that have been shown by all three organisations and, in particular, by their representatives Nigel Miller, David Johnstone and Christopher Nicholson. As minister, I very much look forward to the development of the initiative, and I urge the whole industry, including land agents and their legal representatives, to follow the recommendations in the joint memorandum. It is really important that all sides of the industry throw their weight behind it and make it work.

Over the summer, we have focused on the next stage of our work and the three main workstreams, which are: first, establishing a stable and effective framework for secure 1991 tenancies; secondly, creating a new and flexible framework to stimulate diverse other tenancy arrangements; and thirdly ensuring a much more supportive, wider, cross-cutting context for the whole of the country's tenant farming sector. Although it is necessary for the group to have space to develop its thinking in private, we will continue to draw on advice and seek contributions from individuals on specific issues over the coming months. In the autumn, we will engage further with stakeholders to discuss our thinking around potential draft recommendations and, by late autumn, we will begin to prepare our final report.

At this stage, it would be wrong for me or my colleagues to comment on specific details of our most recent discussions before our views are fully formed and agreed, but against that backdrop we look forward to today's discussion and will be as frank and as open as we can with you about many of the important issues that people will want to hear about and you will want to ask about.

I thank you for the opportunity to discuss this matter. Indeed, having read the *Official Report* of your helpful and illuminating evidence taking over the past week or two, I thank the committee for its work, too.

**The Convener:** Thank you, cabinet secretary.

I want to talk about the group's remit and whether there are any limiting factors to developing the recommendations for delivering the vision for the sector. In particular, I want to focus on remarks that were made by Christopher Nicholson of the STFA. I get the sense that tenant farmers around the country are the absolute anchor of rural communities; indeed, Mr Nicholson

talked about the future of tenant farming families and their wider role in fragile rural communities to ensure that the group considered that particular aspect.

The remit has been more process driven, but it seems to me that the realities of life in the countryside in many places—particularly in the islands—mean that the tenant farmers are the grass roots of farming, as it was. We need to have a focus that allows them to choose where they live, as well as how they live.

**Richard Lochhead:** That is a good question to start. As I said in my opening remarks, one of our key aspirations is to ensure that tenant farming plays a key role in underpinning our rural economy. That is why so many of the issues that the review group is addressing are important.

If we want active agriculture in this country, tenant farming plays a crucial role in delivering that and if we want tenant farming and family farming to be the bedrock of many of our rural communities, farmers need to attract investment and they need access to land—they need land to farm. That is why those issues are so important for the future of Scotland's rural economy.

I assure the tenant farmers of Scotland that the driving aspiration of all our work is to ensure that their contribution to Scotland's economy and to putting food on our tables continues.

**The Convener:** I am sure that we will come to those points in more detail in a minute, particularly the ability to ensure that there is more land for letting. When we look at the way in which land has come out of agricultural use, we must ask whether more land will be made available. We must look at that reduction of hundreds of thousands of hectares of agricultural land in driving the outcome of the group's work. It seems to me that the reductions—1,006 fewer holdings since 2007—suggest that we need to find some way to release the land for more tenancies, start-up units and so on.

**Richard Lochhead:** I will ask colleagues to chip in, because this is a broad and important subject. The key point to make is that, yes, there has been a decline in tenanted land in Scotland. That is one of the primary reasons why we are all here discussing the issue.

The statistics illustrate that there has been a substantial reduction in let land—a reduction of 42 per cent since 1982. However, a reduction in let land does not equate to a reduction in land in agricultural production. A lot of that land is now owned and therefore the land—not all of it, but much of it—is still being farmed. That is an important point from Scotland's perspective.

The thrust of the question was whether the review group will propose measures to increase let land in Scotland. That touches on a range of areas from fiscal measures and taxation to some of the recommendations that we may make. I invite my colleagues to come in on what was a broad question.

**Andrew Thin:** Scotland has one of the lowest percentages of let land in Europe. It is worth making that contextual point. Of course it is absolutely correct to say that just because land has gone out of tenancy it does not mean that it has gone out of farming—it may well still be in farming. However, we are missing an opportunity there, because we are not enabling external capital to come into the sector. Traditionally and historically, people invested in land as a low-risk, low-return investment. In recent times, investors have come to see land as a low-return, high-risk investment. That makes them nervous and that is why there is less investment in tenanted land.

As we set out very clearly in the interim report, it is fundamental that we address confidence in the sector: confidence among tenants to invest and—I stress this—confidence among landowners to invest. It is not one side or the other; both sides must be confident. It is a fundamental truism of any economy—whether we are talking about this sector or about retail in urban Edinburgh—that unless investors are confident, regardless whether the owners of the shops are the tenants of the shops, the sector will not grow.

**The Convener:** I do not know whether any of the surveys looked at how the land is being used. It is no longer tenanted in the traditional fashion. I know that we are talking about farmed in hand land and the like, but is the land as productive as it would have been were tenant farmers active on it, from the point of view of Scotland's gross feed product?

09:45

**Richard Lochhead:** The big picture is that although there is a decline in let land, which is defined as land that is let for more than a year, there is also more owned land, more agricultural production and more seasonal lets. Of course, they are very relevant statistics for the future of tenant farming because anyone who wants to farm land under a tenancy will want some kind of long-term security, and a predominance of seasonal lets or owned land, which reduces the amount of land that is available for letting, clearly influences to what extent they can have that security.

That is why the issues that we are discussing—about giving certainty and confidence to the whole of the sector but particularly to tenant farmers so that they feel that they can make a living and have

the critical mass of land available to make that happen—are so important.

**Iain Mackay:** The utilisation of land is very important. It is not just about creating more tenancies; there are tenancies out there that are in tenancy just now, from which we would like to aid people to retire to allow a new generation into those tenancies so that the land is properly utilised. The economics that goes along with that in rural areas is really important as well.

**Nigel Don (Angus North and Mearns) (SNP):** Thank you, Mr Mackay, for that comment. Can I pursue that point to try to get some sense of how significant it is? As a layman in this context, I have no idea how productive land can be and how much more productive it can be if it is well managed. Are we talking about a factor of one to three—ranging from somebody who manages land well to somebody who does not—or would good management make the land 10 per cent more productive rather than three times as much?

**Iain Mackay:** I cannot give you technical figures but if you look at Quality Meat Scotland's figures for the top third and the bottom third who produce in this country, you will see a massive gap. There is a lot of room for improvement of utilisation of land in this country.

**The Convener:** We move on to some of the aspirations of the review group.

**Graeme Dey (Angus South) (SNP):** When Nigel Miller was in front of the committee recently, he said in relation to the aspirations:

"We must be a lot smarter. Rather than doing what we did before, we have to create new opportunities. We must consider ways of encouraging more diverse use of the rural economy. We must also be a bit more imaginative."—*[Official Report, Rural Affairs, Climate Change and Environment Committee, 6 August 2014; c 3940.]*

What smart and imaginative approaches is the review group considering in order to meet the eight aspirations that the cabinet secretary referred to earlier?

**Hamish Lean:** Fundamentally, it is about new letting vehicles. One of the workstreams that the group is looking at is a form of agricultural tenancy that would allow for flexibility of arrangements between landlord and tenant, with a view to encouraging more land to become available for let and to allowing the parties a certain latitude to negotiate the terms of their own particular agreement, subject to certain fundamental safeguards being in place.

**Graeme Dey:** Is that the same, essentially, as contract farming?

**Hamish Lean:** No. Contract farming is different—in essence, it is driven by two main motivations. First, there is a fiscal motivation. The

owner of the land wants to be seen as a farmer for taxation purposes, particularly in regard to inheritance tax and the reliefs that are available for agricultural property but also, historically at least, because of a fear of security of tenure if they let out land.

In a contract farming arrangement, the "farmer" contracts with someone who might, in other circumstances, have been his or her agricultural tenant. The contracting arrangement provides for the actual farming policy on the farm and usually provides for a basic return returning to the farmer, a return being paid to the contractor and a surplus being divided in whatever proportions the parties have agreed on. However, the new letting vehicle would not be contract farming in that sense. It would be a landlord-tenant relationship.

**Graeme Dey:** Given that the industry is calling for smart and imaginative approaches, has it made any suggestions about things that might be implemented that you are considering, beyond what we have just discussed?

**Andrew Thin:** Yes, we have had many suggestions from the industry.

I would like to step back slightly and contextualise your question. A large chunk of the tenanted sector is made up of secure 1991 act tenancies. In a sense, they provide the backbone of the tenanted sector. In addition to that, we need to develop a range of much more flexible letting vehicles, to use the term that has just been used. If we look forward over the next 20 years, there will be a backbone to the industry and there will be an innovative and flexible new bit. That is how all industries develop—ideas develop in one bit and get transferred into the other bit.

A great many of the suggestions that we have had from the industry have been about how to ensure stable, confident relationships in the backbone of the tenanted sector—the bit that is made up of secure 1991 act tenancies. To a much smaller extent, we have had some reasonable suggestions about the flexible bit of the industry. In particular, we have had some quite good suggestions from the landowning sector. Landowners invest the capital and they see that as an area of opportunity. There is a growing recognition—I would not put it more strongly than that—that those who are involved in the backbone bit of the industry depend on the innovation that is driven by the other bit of the industry. One feeds the other over time.

It is fair to say that we still have our work cut out to come up with a really good answer on the innovative bit. The answer is not only about flexible vehicles; it is about how we get people who are not in the industry and who are doing something else, but who are the real innovators in

life, into the sector to drive change through it. That will be extremely difficult, and I do not think that we should hide from that.

**Iain Mackay:** To get innovation in the industry, we need to create opportunity. The innovation is out there—there are plenty of examples of agricultural practitioners who are highly innovative. Many modern ideas are being developed in agriculture. It is very hard to legislate for innovation; what we need to do is create the opportunity.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I entirely agree with Mr Mackay's last remark. On that very subject, given that one of the aims of the review is to encourage new entrants and to make it easier for them to enter the industry, have you looked at the example of share farming, which is practised in New Zealand and, I am sure, in other countries, which provides that outcome?

**Richard Lochhead:** We are very keen on all such examples from the rest of the world. Another positive element of the review is the good information that we are gathering about what is happening in this country, on which we have an extremely good set of data for the first time ever, and in the rest of the world. The interim report is good in that way, because it looks at what is happening not just here but in the rest of the world, and we have to learn from that.

Over the past few years, as minister I have often had share farming mentioned to me. The review group has the opportunity to focus on such new ideas and how they could be implemented in a Scottish context.

**Andrew Thin:** In a way, this industry is not that different from others. Any industry that suffers from high barriers to entry struggles to innovate and develop. If we are talking about someone becoming the sole proprietor of a farm, the barriers to entry are pretty high. The level of capital involved is enormous. It is possible to lower those barriers significantly if a landlord puts up the capital and allows someone to become a tenant, but they will still need quite a substantial amount of working capital.

The workstream on new entrants and innovation is looking at a route map that draws from not just other countries but other industries. In other industries, on the whole, the normal way in for innovators is that they start working in the industry, then they start doing a bit in their garage while they are still working in it, and then they use stepping stones to make their way through it. In that workstream, we are trying to map out the stepping stones through the industry.

**Alex Fergusson:** That is quite reassuring—thank you.

**The Convener:** We will move on now. Nigel Don has a question about the right to buy.

**Nigel Don:** I heard what the cabinet secretary said about the 1991 workstream, so it might be that you will not be able to say much in answer to my question, but I would like to know where you think we might be going in relation to the right to buy and 1991 tenancies.

**Alex Fergusson:** Or any others.

**Nigel Don:** Indeed.

**Richard Lochhead:** Clearly, we want to consider that issue, because we cannot look at the future of tenant farming in Scotland without looking at the right-to-buy debate. As members are aware, many tenant farmers want us to address that issue, and it has featured to a great degree in our work so far. Many people have told the committee that there are circumstances in which the right to buy is perhaps the only way forward and is the best option. We have recognised that in our interim report.

We have a lot of work to do over the next few months in order to reach a final view on what role the right to buy has to play. However, clearly, there are examples where it is difficult to see any alternative ways of allowing land to be used productively and enabling the family concerned to have a better and more viable future.

That is where we are at the moment. We recognise the case that has been put to us, which is that there are circumstances in which use of the right to buy could be justified, but we have a lot of work to do with regard to the circumstances in which it could be implemented, what the consequences of that would be and how far it should go.

**Nigel Don:** The evidence that we have heard suggests that a lot of the issues might be dealt with by modifying waygo or the right of assignation. I take it that you are considering those issues as ways of dealing with 1991 tenancies.

**Richard Lochhead:** Yes. There are many issues to be addressed with regard to ensuring that tenant farming remains attractive. As I said before, the primary ingredients are assuring people who want to take on a farm that it is going to be viable, that they will be able to get a return on investments that they make in the farm, and that they will be able to plan for a long-term future on the farm.

Iain Mackay, who is sitting next to me, is a tenant farmer. He is in a much better position than I am to explain what is required to make a living out of tenant farming, but in terms of the wider approach, the issues that I outlined are what we are thinking about.

**Iain Mackay:** That is absolutely right. The issue is about building confidence and assuring tenant farmers that they will be able to remain on the farm long enough to see a return on investments that they make. There is no doubt that the return in agriculture is a long-term one. The landowner also has to be aware that he is investing for the long term, too. There is no short-term return in land ownership or agriculture. We need to build towards security and towards a position in which tenants and landowners have confidence in each other.

**Richard Lochhead:** That is a conversation that we are having. All those issues are addressed in the report and are crucial with regard to giving people confidence about investments in farms and who will get the return from that.

**Nigel Don:** I get the impression that this is a work in progress. We look forward to developments.

**Alex Fergusson:** I, too, look forward to developments, because the issue needs to be settled. There is no doubt that the mere mention of the right to buy has over the years had a huge impact on the amount of land that people have been prepared to let.

I agree that confidence is key to this issue. As Andrew Thin said earlier and Iain Mackay has just said, those on both sides of the equation must have confidence. The landlord must have confidence when it comes not only to investing, but also to letting the land in the first place. My question is simple. In a situation in which a right to buy exists, how do you instil confidence in landlords to let land, especially if the right to buy is absolute rather than pre-emptive? Is it possible to achieve that level of confidence with an absolute right to buy in place?

**Richard Lochhead:** We live in a world in which there are always going to be debates about all kinds of issues. All political parties in the Parliament have a responsibility to ensure that landowners have long-term confidence when it comes to decisions to let land.

10:00

However, I have paid close attention to the debate for many years, and I think that we should not get bogged down in thinking that the amount of land that is being made available to let is influenced only by the right-to-buy debate. There are a range of factors out there. Land is a valuable and overpriced asset in Scotland, and land ownership is therefore seen as a good thing. Another factor is the way in which the common agricultural policy is delivered and how payments are distributed.

There is a question of flexibility, to which Andrew Thin referred. We all meet farmers in our constituencies. A farmer will own one farm, he will have another farm that he lets, and he may have a series of seasonal lets over and above that. I was speaking to a farmer last week in my constituency about all those things. They involve business decisions by farmers. There are a range of commercial considerations and business decisions that influence how land is let, when it is let and what vehicles are used.

The debate about letting land covers a range of vehicles, but the right-to-buy debate is only about secure tenancies. No one on this planet has ever suggested—as far as I am aware—that there should be an automatic right to buy for other kinds of land; it is suggested only in relation to secure tenancies.

**Alex Fergusson:** I hear what the cabinet secretary says, and I have no doubt that he intends that to be the case. However, the issue has been the elephant in the room since 2002, when his colleague Fergus Ewing first mentioned it in the Rural Affairs Committee.

With great respect, cabinet secretary, many of these things—short-term lets, annual lets, grazing lets and other contract farming—have come in as a way around letting land on any sort of permanent basis.

I hear what you say, but I think that the biggest inhibitor to people letting land has been talk of the right to buy. I have not got a question; I just want to say that I hope that, whatever the review group comes up with, even if it includes a right to buy in some form, it can put a lid on the fear that has been engendered by the issue being up in the air and remaining the elephant in the room. It has been the greatest constriction on land being let in Scotland.

**Richard Lochhead:** That is a fair point, and I think that I speak for the review group when I say that we are determined that the review will be a landmark review that will allow us to move on. We want to come forward with substantive and fundamental changes and, no doubt, some radical proposals that will allow us to give certainty to everyone in agriculture on that subject. We want the review to give us a vision, and we will put the tools in place to make it happen.

**Iain Mackay:** There is quite a close correlation between the CAP and the amount of land that was let and then taken back in hand. Right to buy plays a part in that, but it has too often been the elephant in the room. Farmers say that that is why they are taking land back in hand, when it is actually to do with the way in which the CAP was paid in the past. It was far too easy for people to

claim agricultural subsidies and not actually carry out agricultural activity on the land.

**Alex Fergusson:** We have probably taken the issue as far as we can, but I share the cabinet secretary's aspiration in that respect.

**Andrew Thin:** I want to make two brief points. First, confidence comes from certainty, so what matters is that people feel that they know what is going to happen. That is a fundamental point.

Secondly, we need to understand what is driving the calls for a right to buy. That has been at the guts of the review. If we do not address that question, the calls will continue, and so will the uncertainty. That is another fundamental point. The review group could say that there should or that there should not be a right to buy, but it will not produce certainty unless it also addresses the reasons behind the calls for a right to buy. A big challenge, particularly for the landowning sector, is to understand what has led to the calls, and to address those causes.

**Alex Fergusson:** I do not disagree.

**The Convener:** I hear what the cabinet secretary says about there being no alternative with regard to dealing with the impasse with some secure tenants. We look forward to seeing how you work through the difficulties in dealing with that.

However, it is clear to me that land could be let in the way that is possible in crofting. I have mentioned this before, but I would like to know what the cabinet secretary thinks about it. There is a right to buy for crofters—that has been the case since 1976. We have also subsequently made it possible to create new crofts that do not have a right to buy attached to them. Is that one of the considerations that you might take into account in relation to the creation of new holdings for rent for agriculture?

**Richard Lochhead:** Yes—we are looking at that. We are, of course, aware of the recommendations of the land reform review group with regard to smallholdings, and we are aware that, in some parts of Scotland, one can turn a smallholding into a croft and therefore get the right to buy—

**The Convener:** It can be done only with great difficulty, it has to be said.

**Richard Lochhead:** I have no doubt, but that does not apply to smallholdings in other parts of Scotland. However, we are taking on board the issue that the convener has raised. I do not know whether others want to comment specifically on smallholdings.

**Andrew Thin:** I do not want to comment on smallholdings, but I have a comment to make. As

the cabinet secretary said, the conversation around the right to buy has concerned 1991 secure tenancies. Over the next 20 years, we need to expand significantly the supply of other types of tenancies so that we have a much more flexible and diverse range of tenancies. There is no suggestion at the moment that there will be a right to buy as part of that. If we are successful in addressing the underlying causes of the calls for a right to buy, that will lead to significant stability.

**The Convener:** Fine. Jim Hume has the next question.

**Jim Hume (South Scotland) (LD):** We have covered some of the points that I was going to ask about. I would like to put on the record my view that we need to get trust back into the system. Obviously, waygo and the right of assignation are important, but it would be interesting to hear people's thoughts about rent reviews and so on, which could also be up for reform. How far can we go in that regard? Scottish Land & Estates has stated its concern about the possibility that the report would concentrate only on 1991 tenancies. It considers that the issue should not be looked at in isolation.

With all that in mind, what do you think you can get out of all this reform? What sort of timeline are we talking about? I do not think that we can get trust and confidence back into the system until everyone knows where they are and can move on.

**Richard Lochhead:** You mentioned rent reviews; I might ask my colleagues to talk about that. Andrew Thin, in particular, has been heavily involved in the issue recently.

There is a range of important issues, but with regard to the timescale, the Government wants to legislate as soon as we can, once we have the recommendations. We cannot give an exact timetable, because we do not know what the recommendations will be, how many will require legislation and how easy or otherwise it will be to legislate on them. I am confident that some of the recommendations will not require legislation.

All I can say is that, at this point in time, we are determined that certainty will be given to the industry as soon as is practicably possible, and that we will legislate as quickly as possible, using whichever vehicle is most appropriate. Various opportunities are coming up in this session of Parliament, but I cannot give a cast-iron guarantee on any of the issues until we know what the recommendations are. This depends on the complexities and the legal issues surrounding the recommendations.

On other issues, it is probably an appropriate time to ask colleagues to give one or two examples of what they see as key issues that have come up in the various meetings that have

been held around the country in the course of our work so far. Andrew Thin might want to speak first, because rent reviews have been mentioned.

**Andrew Thin:** I will go first, which will give the others time to think.

It is important to be clear that confidence is not just the job of Government. The industry initiative on rents is a powerful signal of what could and, I hope, will be done. The Government has had an important catalytic role in that, but it has been industry-led.

We are thinking about and will very probably make some recommendations, not for Government but for the sector. Those will be around issues relating to the potential role of self-regulation, which is effectively what the rent agreement is about—it is guidelines combined with self-regulation—and the importance of leadership in the sector. In my experience of working in other parts of the economy, having industry bodies at loggerheads with each other damages confidence, and having industry bodies working in a constructive and collaborative environment strengthens confidence. Leadership is very important, so we will need to say something about that.

An important ingredient in the mix is the role of professional intermediaries or agents, or whatever you want to call them—they are often not intermediaries in the true sense, because they are working for one side—in helping to build confidence. To operate in a politically sensitive and astute manner is absolutely fundamental. It is important that at the end of the process the review group is absolutely clear about where our recommendations are not for Government but for the players in the sector. I very much hope that all the players in the sector will listen to that and play their part—I am sure that they will—because it is vital that they do so.

**Iain Mackay:** Diversification is another key issue. It plays a huge part in allowing investment in often fragile rural areas and making the agricultural holding more dynamic and resilient. Ensuring a smoother transition with diversification would help.

**Hamish Lean:** What has encouraged me is that, as the group has progressed, it seems to have galvanised thinking among the stakeholder bodies, which are now promoting initiatives to fix the problems in the sector. SLE's recent announcement about an amnesty in respect of compensation claims for improvements is a good example of that. An out-going tenant claiming compensation for an agricultural improvement is hidebound by procedural rules, such as the necessity to have served a notice in advance of carrying out the improvement and so on. That

issue was raised with the group at various meetings across the country. SLE is proposing a means of fixing that by, in essence, doing away with the need to have served a notice in advance. That is a helpful suggestion. Another example is that the discussions among the stakeholder groups, which were facilitated by Andrew Thin, led to the recent announcement about the rent review initiative.

**Jim Hume:** Two weeks ago we had SLE, the NFUS and the STFA here; we saw quite a difference in their body language and the words that they were now using, which we all thought was quite constructive. Of course, we have to bear in mind that not everybody out there is a member of the NFUS, SLE or the STFA. Those bodies might be leaders, but they are not rulers.

**Graeme Dey:** On the point about consensus, at the previous meeting both the NFUS and the STFA expressed the view that it would be helpful to have a mandatory code of practice for land agents in the sector. I am sure that you will have taken reams of evidence on the issue of the conduct of rent reviews. Is that something that the review group is likely to come to a view on or to make recommendations on, or does that sit outwith what you are trying to do?

**Richard Lochhead:** That question links in very nicely with Jim Hume's final point, which is that although there is a lot more constructive working across the sectors, ultimately the people whom you met and with whom we deal do not have control over what every single landowner, landlord or tenant farmer in Scotland does. That leads us to the debate about voluntary versus statutory approaches. Clearly—and not just from a selfish, Government point of view of not wanting to legislate too much—the voluntary route is the best route to building a better atmosphere; it leads to more constructive relationships and a better environment in which to live and work. That is our preference, of course, and we welcome the recognition from all sectors that working together is important and that we have many common objectives.

10:15

A main issue is the need to recognise that we need people in this country to work the land and produce food. That is in the interests of everyone, whether they are a landlord, a tenant or a member of the public, and we want to support it. It is in everyone's interests to drive towards that and to make it happen, for commercial reasons as well as for the national interest.

We will consider carefully the extent to which we have to go down the statutory route. We cannot rule it out: legislative change in one shape or

another will result from the review. However, the extent of it, and where that route might apply, is still to be decided and will be guided by experience.

We know about the court cases and the controversial issues, and we will be guided by how the sectors respond to those issues. If there is an inadequate response, we will be left with no option but to consider the statutory route. If there is a good response, and things improve, that will take the heat off the need for a statutory solution.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** Good morning, gentlemen. I remember attending a meeting in the Tore hotel in 2002 on the right to buy. Andrew Thin was there as an adviser. It was the inaugural meeting of the campaign for the right to buy.

I lodged a motion on that very subject at the Scottish National Party conference later that year, which I think may have helped to move the SNP's position on the issue. I am very interested in the subject. That was 12 years ago, and we are still talking about it.

I believe that, when it comes to issues such as investment, improvements, compensation, waygo, retirement, the releasing of land and succession, many of them—or a good few of them—could be dealt with through assignation. I know that it is not a magic bullet, but Christopher Nicholson of the STFA said in oral evidence to the committee:

“Assignation is potentially a real game changer”.—  
[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 6 August 2014; c 3955.]

It may not be a magic bullet, but it is pretty important for the viability of secure tenants and for ensuring that investment continues in the future.

We have already touched on the issue of assignation, but I would like the panel to elaborate on it. Assignation, along with certain other changes to, for example, the need to register and the right to buy, may well be a way forward that would allow us to deal with the right to buy.

I agree with the cabinet secretary—I have not heard anybody, other than some members of NFU Scotland, say that the right to buy would apply to non-secure tenants. Every political person I have talked to, apart from one or two on the landowners' side, has made it clear that that would not be the case. I have certainly never talked about any kind of right to buy other than in relation to secure tenants, and no one at the inaugural meeting did, either.

Would assignation be a game changer? Could it deal with much—if not all—of the problem?

**Richard Lochhead:** The issue is very important and is dominating much of our thinking. Members

of the review group might want to come in on that point, because it relates to opening up opportunities for future farmers and the security that new entrants or farmers who want a more secure tenancy are seeking. The question of whether assignation could play a role in that regard is very relevant.

One big issue in the debate is that of opportunities. We all meet farmers in our constituencies throughout Scotland who want to farm until they drop because they do not see any way of moving on or opening up opportunities for others to take over their business or their tenancy. Assignation is crucial to that. It is a central issue, and it could be a game changer if we were to find a way of reviewing the flexibilities around it.

One concern that I will put on the table and which I think Nigel Miller reflected on in his evidence to the committee is that, as soon as you attach a financial value to anything in life, those with the deepest pockets see an opportunity and there is always the danger of consolidation. I do not want to get into the position in agriculture that we have in the fishing industry, where there has been consolidation as a result of attaching a value to something that is a fundamental right.

Assignation could be a game changer, but we would have to think very carefully about how it would be introduced and whether a financial value would be attached to it. Certainly, if it could be done, it might open up opportunities. Given that the review group is thinking and talking about the issue, the group members who are with me might want to give their views.

**Hamish Lean:** We are taking a very serious look at all aspects of assignation, which ranges from, at one end of the spectrum, a simple right to assign a secure 1991 act tenancy as a secure tenancy to a third party to, at the other end, a right to assign a tenancy that, as a result of a conversion process, becomes a fixed-duration tenancy of some sort, and everything in between. We are conscious of the possible unintended consequences that the cabinet secretary has described. For example, introducing assignation as an exit route for tenants to fund their retirement will not necessarily allow tenancies to move to new entrants, because the outgoing tenant will, quite rightly, want to sell at the highest possible price.

Another aspect of assignation that we are looking at is widening the class of family member who would be entitled to have the tenancy assigned to them. We are actively considering all such issues.

**Andrew Thin:** Assignation will undoubtedly be a game changer if we get it right, but consolidation is the challenge that we have to face. I want to put to

one side the issue of new entrants—as I have said, we need a route in for new entrants; they are not going to enter the sector in one jump—and give the committee an example of the quite innovative thinking that might help. If the right was to assign to a limited-duration tenancy but the tenancy lasted until the incoming tenant was 65, the value would depend on how young the incoming tenant was. That might help a great deal with the point about consolidation, and it is certainly the kind of thinking that needs to be done here.

**Iain Mackay:** Just to back up Andrew Thin's comments, I would suggest that assignation cuts across a lot of issues and resolves a lot of problems. It is probably not a route in for new entrants, although funding for new entrants is available through the Scotland rural development programme. As Andrew has suggested, if there was a timescale element and some SRDP funding was available, a new entrant might be able to afford an assignation.

**Dave Thompson:** Thank you. That is fine.

**Alex Fergusson:** As far as assignations are concerned, would you consider it apt for the landowner of the farm where the tenancy was being assigned to have the right to take on the assignation when it became available?

**Richard Lochhead:** That is a very controversial question. After all, we are trying to protect let land and tenancies in Scotland. We have not reached any conclusions; that particular issue came to prominence in the initial stages of the review and in the interim report, and we have to look at all the issues that the committee is discussing today. We are trying to give you an idea of some of the options that are being discussed, but we would have to think carefully about the consequences of such a move for the amount of let land available in Scotland and so on.

**Alex Fergusson:** I will leave it at that for now, convener.

**Claudia Beamish (South Scotland) (Lab):** Good morning. I want to take the panel back to investment in relation to secure tenancies, which we touched on earlier. I will preface my question by saying that I agree with my committee colleague Jim Hume that there was a positive atmosphere when we took evidence from a range of groups recently.

The investment section of the interim report goes from paragraph 117 to 122. Paragraph 118 says:

“SLE believes that tenants are currently subject to broadly equivalent flexibilities and constraints to those that characterise the owner-occupied sector. SLE state lenders tell them that what matters most is a clear and robust business plan regardless of whether the business operates

on owned or rented property taking into account the wider assets of the business.”

However, I have heard remarks and evidence from STFA and individual tenants in South Scotland, which I represent, to the effect that investment is extremely difficult, perhaps specifically because they are tenants. Will the panel comment on that, in the context of taking forward the review?

**Andrew Thin:** We met some bank representatives to make sure that we understood what we are talking about here. The situation is not that different from the one in other parts of the economy. Anyone who lends money will look first at the person to whom they are lending it and assess whether they are competent and credible and whether they have a track record. Secondly, they will look at the person's business plan and whether it stacks up. Thirdly, they will look at issues around collateral. It is in that third area that tenants find themselves in difficulty, because they tend not to have collateral to any great extent, so that is where we have focused our attention.

That links back to the point about assignation. Part—but, I stress, only part—of the attraction of an assignation route is that it can create collateral, which would strengthen the tenant's ability to invest. It is not a magic bullet: if a tenant is not credible or does not have a business plan that stacks up, they will still not get investment. However, assignation would undoubtedly help, and that is the message that we got from the banks.

**Iain Mackay:** It becomes increasingly difficult if someone is a new entrant, because they have no history and no credible track record. They might have a fantastic business plan, which might be better than the business plans of some of the older, more established tenants, but all that the banks are looking for is credibility—the person's history. Some of the vehicles that we are considering, such as share farming options, would give people the credibility that would put them in a position to be able to get finance.

**Alex Fergusson:** In answer to a number of questions, mention has been made of the variety of tenancy arrangements that exist outwith the 1991 act secure tenancies. There are a wide range of them, which I do not need to repeat.

I was unable to be at the meeting two weeks ago at which the committee took evidence from stakeholders, but there was quite a discussion about those arrangements. Some of the discussion became quite focused on freedom of contract. It would be fair to say that completely opposing views were expressed by the Royal Institution of Chartered Surveyors and the NFUS, which seemed to be quite in favour of that, and

STFA, which in its submission said that business tenancies

“are patently not the answer for the tenanted sector in Scotland.”

There is obviously a wide range of views among stakeholders on the value of some of these things. STFA also said that it was “deeply disappointed” that the future of limited partnership tenancies seemed to be beyond the range of the review.

To start a discussion on all of that, will the panel say whether the group has found that the range of current tenancy arrangements has helped or hindered the journey—if I can call it that—towards the vision that you have? Are there lessons to be learned from the farm business tenancy system south of the border? Do you envisage such a system having a place in the future, or do we need more innovative ways of approaching the issue?

10:30

**Richard Lochhead:** In the debate on the options for delivering greater confidence and security, the first thing that any prospective or existing tenant will say is that they need to know that they will have a farm to farm for a substantial amount of time in order to allow them to invest and make a living. That is why security of tenure is so important in the debate about how we give long-term certainty to tenants as well as landlords. Many people argue that freedom of contract provides exactly the opposite of that, and that long-term security is not the central aim of freedom of contract.

However, picking up on what Andrew Thin said earlier, I think that if we look at the needs of Scottish agriculture and Scottish tenant farming, it is clear that we need flexible vehicles out there. We need a mixture of provision, because Scotland is extremely diverse. We all meet farmers who have a variety of arrangements in place, because they have to adapt. I always feel silly talking about what farmers do when I sit next to Iain Mackay, but from my experience of speaking to farmers, I know that, in some cases, they have to be able to adapt year on year—hence the existence of seasonal lets—while needing the core activity to be secure in the long term. The freedom of contract that is being pursued south of the border is not that popular with many tenant farmers I speak to in Scotland, but it is clear that we need a range of vehicles and that, in some circumstances, we need more flexibility.

I will let others come in, because there are others here, including a farmer, who have taken a close interest in the matter.

**Iain Mackay:** Richard Lochhead is absolutely right. The core business needs to be secure, but it is also necessary to have dynamic movement,

which is what the availability of other land provides. Structured arrangements fit in with the agricultural system, but the tenancies that work really well have a secure hub. Whether it takes the form of an owner-occupier or a good long-term tenancy, a secure base is vital to any agricultural business that is trying to grow.

**Alex Fergusson:** I have a final point. I noticed with pleasure that the report includes the sentence:

“At the same time we have heard positive stories of great relationships between landowners and tenants that are overcoming all these issues to enable and promote thriving, modern tenanted farms.”

I am glad that that was mentioned, because there are perfectly good examples all over the country of situations in which those arrangements work extremely well. Have you been able to identify what creates such good relationships? Do they have a unifying factor? “Factor” might be the operative word here—I am not sure. If you have been able to identify such a factor, are you likely to be able to translate that into your recommendations?

**Andrew Thin:** There is a specific workstream on the relationship issue because, as you have rightly identified, it is fundamental. It is very difficult for Governments to legislate to make people behave themselves, and a problem for a review such as ours is how we produce recommendations on how to have good relationships.

That said, I think that some clear themes are emerging. They are partly just about people behaving themselves, but they also involve more structural issues such as the so-called intermediaries who are not really intermediaries because they act for one side. The potential exists for short-termism to creep into that relationship, because short-term contracts encourage people to maximise the rent, regardless of whether they damage the relationship in the process.

We will make some pretty clear recommendations, which I do not think will include introducing new statute. I come back to my point that a great deal of what we are talking about will involve the sector recognising that it is from its own behaviour that confidence will grow. It is extremely important that everyone in the sector understands that, if they sit on their hands and wait for Government to sort it, either it will not be sorted or it will be sorted in a manner that might not be particularly flexible and helpful.

**Iain Mackay:** One of the main points that has come through from the relationships that work well is that there is close communication. It is as simple as that. We cannot legislate for that; it is a case of communicating and understanding what the other party wants.

**Alex Fergusson:** I fundamentally agree on that point, and I thank you for making it.

**Claudia Beamish:** I want to turn our minds to and get some views from the panel on limited partnerships. In its written evidence, the STFA said:

“Limited Partnership tenancies must not be brushed under the carpet or relegated to the ‘all too difficult box’. Their future will have been complicated by the Salvesen Riddell debacle, but STFA would urge the”

review group

“to engage with this group of tenants to explore a way forward for them.”

Obviously other groups will make different comments on the issue, but I want to focus on the context of that comment.

A tenant constituent of mine who has a limited partnership has raised concerns that, post *Salvesen v Riddell*, mediation is not materialising, and he fears that he will—as he puts it—be railroaded into the land court. To what degree will the review look at that issue, given that it is a serious concern with regard to the future vibrancy of the tenanted sector? I should stress that that is evidence from just one of my constituents, so the issue might not go any broader; nevertheless, I raise it as a concern.

**Richard Lochhead:** I will give you a quick overview of my understanding of the debate surrounding limited partnerships, and I am sure that my colleagues will want to talk about the extent to which the review group will take the issue on board in the coming months.

Limited partnerships play an important role in agriculture, but I have been persuaded that the origins of such partnerships lie in the fact that they have been seen as an easy alternative to the long-term secure arrangements that might have benefited tenant farming, particularly in Scotland. Our challenge, therefore, is to offer alternative vehicles to limited partnerships that provide the tenancy sector with more long-term security of tenure. Limited partnerships are, by their very nature, less secure and, compared with other arrangements, can be brought to an end quite easily. The challenge that we face is to make the alternatives available and attractive and to ensure that they work.

With regard to *Salvesen v Riddell*, mediation will be put in place. As we have previously discussed in committee, we want to set up mediation for those tenants who are affected by the ruling. Unlike the usual mediation, which takes place between two parties, this mediation will involve three: the landlord, the tenant and the Scottish Government. That makes things a bit more

complicated, and we must get the legalities right before we enter into the mediation proper.

However, that mediation will be delivered, and I have asked my officials to give me a report on what progress has been made so that we can ensure that we deliver it very soon. I am aware of the STFA's concerns, and I take the issue of mediation seriously. To give you some comfort, I reiterate that we will get the arrangements up and running as soon as possible.

I invite other review group members to come in on the role of limited partnerships and how we can deal with them as we move forward.

**Hamish Lean:** Essentially, from a historical perspective, limited partnerships were simply a vehicle to avoid security of tenure. That was the sole reason for their creation.

Since 2003, general partners in limited partnerships who receive a termination notice have been able to extend their occupation for at least three years beyond the end of the limited partnership by serving the requisite notices. The *Salvesen v Riddell* case was all about the notices that were served on 3 February as the bill was going through the Scottish Parliament. Many landowners panicked—for want of a better word—and served termination notices even though the partnerships were not due to come to an end until several years hence. The question was whether the retrospective legislation, which turned those particular general partners into secure tenants, was or was not within the power of the Scottish Parliament. Ultimately, we discovered that it was not.

According to the statistics, there were about 517 limited partnership tenancies in 2013. As a result, although the issue is very serious for the tenants who are affected, the number of people who have been affected by the *Salvesen v Riddell* case is relatively small. I can only echo the cabinet secretary's point about the flexible letting vehicles that we hope to introduce being a way forward that will give general partners opportunities to continue in occupation.

**The Convener:** As no one else wants to comment on the issue, Claudia Beamish will ask about the wider cross-cutting context.

**Claudia Beamish:** We have considered the broad issue of the need for positive relationships. Although such relationships cannot be legislated for, there is an issue to do with leadership, which Andrew Thin raised and other people touched on.

I understand that the review group asked about ways of ensuring that CAP and taxation either have a neutral effect on or positively encourage the letting of agricultural land. Recent CAP reform announcements have included measures under

both pillars that are targeted at new entrants, such as eligibility for basic farm entitlements and the ability to apply to the national reserve.

At our meeting on 6 August, we had a broad discussion with stakeholders about the relationships between landlords and tenants. Issues about creating a supportive wider cross-cutting context were covered in the discussion about the review group's remit, but it has been suggested in evidence to us that there are other issues to take account of. For example, the Scottish Agricultural Arbiters and Valuers Association talked about the importance of taxation and the implications of

"Government intentions to convert significant areas of rural land to forestry",

and went on to say that

"the hardest but most important area to influence is psychology."

Do the witnesses wish to comment further on how we might create a supportive wider cross-cutting context? How might review panel members influence the psychology of landlords and potential landlords? In that respect, I am thinking about confidence.

I realise that my question had rather a long preamble, but I wanted to provide some context.

**Richard Lochhead:** I am tempted to say that in four weeks' time the people of Scotland will have the opportunity to deliver financial independence and tax powers to this Parliament, which will enable us to tackle some of the fundamental issues that affect the use of land in this country and to incentivise the creation of tenancies—there, I said it.

**Claudia Beamish:** Yes, cabinet secretary. You succumbed to temptation.

**Richard Lochhead:** The issue is relevant. It is ironic that we are spending a lot of time and energy considering serious issues about the availability of land in Scotland for letting, when we could, if we had tax powers in this Parliament, make fundamental changes that would have a big impact. It is an important point. In past years, I have made representations to United Kingdom chancellors about the need to use budgets to incentivise letting, and they have not even replied. I hope that we get a yes vote in September to ensure that from 2016 we have more of a say over such important issues.

**Claudia Beamish:** The Scottish Affairs Committee has been looking at evidence on taxation. Do you or other members of the panel wish to comment on what the UK Government could do in that regard? It might be helpful to get some balance into the discussion.

**Richard Lochhead:** I am happy to respond to that, although I am not sure that I can give much balance. I welcome the Scottish Affairs Committee's consideration of the role that taxation and fiscal measures could play in the land reform debate. Indeed, it relates to your question about cross-cutting issues, to which I will come in a moment.

However, our experience of successive United Kingdom Governments has been that there is zero interest in looking at tax and fiscal measures in relation to land to help with this debate. That is the unfortunate reality: the UK Government and the Westminster Parliament have a track record of not touching tax measures that could help to free up land in Scotland for letting. I hope that that will change one day, and if the Scottish Affairs Committee gives more prominence to the role that taxation can play, that will be a good thing. However, we can take the powers into our own hands so that we do not have to rely on the Scottish Affairs Committee being listened to by unsympathetic Westminster Governments.

10:45

As for other cross-cutting issues, I want to mention forestry and land reform. The land reform review group addressed some of those issues and, as you will know, we announced just last week the Forestry Commission let, which is going to a new entrant in the Inverness area. There is a big debate to be had about how we use Scottish land—and publicly owned land—to help encourage let land and new entrants and to create new tenancies. The new starter units that the Forestry Commission has created are bold and radical and they show how things can be done in the future. The land reform review group flagged up a number of measures for taking that debate forward, and CAP payments and how they are applied also have an impact.

Such cross-cutting issues are important. However, there are a number of others, and I invite those who are with me to highlight any that have come to their attention in the past few months.

**Iain Mackay:** This might go slightly beyond the remit of the group but, as a farmer, I am passionate about forestry. A great opportunity was missed when grants were given for planting woodlands, because there could have been more integration with agriculture. A lot of agricultural land out there has become unmanageable because the people are no longer there to manage it, but with sympathetic planting those areas could become manageable once again. I am tenancing a place that was planted, and that planting has made the management of the land a lot easier and

more efficient. We need to look at those issues and integrate them more closely.

I back up the cabinet secretary's point about the new CAP, which, along with the closer look at activity and blacklisting, should ensure that land is used properly and that subsidy cannot be claimed merely because someone has an eligible chunk of land.

**Richard Lochhead:** One of the motivations for choosing 2013 rather than 2015 as the trigger date for land that qualifies for CAP payments was the case made by the STFA and others that we should try not to incentivise the taking of land back in hand in order to take advantage of the new payments. I hope that that move has helped to protect some let land in Scotland.

**The Convener:** I hope that you also took account of the fact that the committee unanimously said that that was a good idea.

**Richard Lochhead:** I was just about to make that point. [*Laughter.*] The most important contribution, of course, was the committee's report, which supported the case that had been put by various sectors.

**Andrew Thin:** In response to Claudia Beamish's point about psychology, I think that history has left rural Scotland with a set of cultural attitudes, behaviours, dress and all sorts of other things. Urban Scotland has largely evolved from that position, but it is still quite prevalent in rural Scotland and I think that that underpins, in a cross-cutting way, some of the challenges that we are addressing. At the risk of repeating myself, I add that a key outcome of the review—and I realise that this is only partly in the Government's gift—is the need for really robust leadership on all sides to move rural Scotland on from that history.

**The Convener:** That is good—I think that we have rounded off that topic. We move on to Angus MacDonald, who has some questions about process issues.

**Angus MacDonald (Falkirk East) (SNP):** The committee has heard that stakeholders are generally supportive of the review group's work to date, with Scottish Land & Estates stating:

"We are ... quite optimistic that the outcome will be productive and will result in a more vibrant tenanted sector in Scotland."—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 6 August 2014; c 3972.]

Moreover, the NFUS has said:

"the present review process is an opportunity for significant change and a new collaborative approach".

The comments from that side are encouraging. However, the Royal Institution of Chartered Surveyors has called for a moratorium, signed up to by all the major political parties in the

Parliament, on any legislative change for at least 10 years.

Given that certainty has been highlighted as being imperative a few times this morning and that there seems to be a remarkable degree of consensus on the need to maintain stability, do you see that situation continuing in the short to long term? How will you ensure that stakeholders are kept on board throughout the rest of the process and beyond?

**Richard Lochhead:** The group now has the task of coming up with recommendations and proposals. We are not so naive as to sit here and think that every recommendation that we come up with will be warmly welcomed by every stakeholder in Scotland. We will just have to wait and see. However, I think that it is fair to say that there is a degree of consensus and that we are all trying to get to the same place.

I cannot speak for the other political parties, but one of the Scottish Parliament's attributes is the ability to reach consensus on a number of important issues. The committee has a key role to play and I will pay close attention to its views. I expect that you will follow up your evidence-taking sessions with a communication to the Government and the review group in particular about what you have debated.

Our aim will be to keep the spirits of co-operation, constructive dialogue and consensus going right to the end. I hope that if we deliver effective proposals and recommendations thereafter, they will attract support and that the Parliament as a whole will believe that the job has been done and that we can move on. That is our challenge as the review group. It is in the Parliament's hands to take decisions on the issues, but there is hope in that respect.

**The Convener:** Thank you for that. We have met in an optimistic mood today, and we look forward to seeing the outcomes of your deliberations by the end of the year. I thank the cabinet secretary and his supporting review group members for their evidence.

We will have a five-minute break while we change panels.

10:52

*Meeting suspended.*

11:00

*On resuming—*

## **Marine Protected Areas (Designation)**

**The Convener:** I welcome everyone back for the third and final item. Following on from last week's stakeholder evidence-taking session, the committee will take evidence from the cabinet secretary, Richard Lochhead, on the Scottish Government's designation of marine protected areas.

I welcome the cabinet secretary once again. I also say good morning to David Mallon, head of the marine environment branch, and David Palmer, acting head of division in marine planning and policy, both at the Scottish Government.

Cabinet secretary, if you wish to say something to start off with, please do so.

**Richard Lochhead:** I thank the convener and the committee for the opportunity to discuss our work on marine protected areas in Scottish waters. I read the *Official Report* of last week's evidence-taking session with interest—it is good to see that the committee continues to take a close interest in this innovative policy area.

Before I outline our work on the MPAs, I echo the remarks that the convener made at the beginning of the meeting—I, too, was very sorry to hear about Laurence Mee's sudden death last week. Laurence was, of course, the director of the Scottish Association for Marine Science at Oban and was due to give evidence to the committee. He was a major figure in our marine science community in Scotland for many years and was very enthusiastic about, and closely involved in, what was being achieved in the country. His directorship of SAMS was characterised by energy and enthusiasm, and he helped to solve some of the big marine challenges for people and the environment in Scotland. He will be sorely missed, and I add my condolences to his loved ones, his colleagues at SAMS and his friends.

I will make a short opening statement about our work on the MPAs, which form a major part of our strategy for nature conservation.

Scotland's seas are world renowned for their biodiversity and it is vital that we protect them. As I am sure the committee is aware, our seas are the fourth largest in the whole of the European Union and support many habitats and species, including cold-water coral reefs and 22 individual species of whales and dolphins. Scotland also has 5 million seabirds—one for every person in the country—and is home to almost half the European Union's breeding seabirds.

Current and future generations should be able to continue to enjoy the vast array of marine species and habitats that depend on our seas. Only by protecting those seas can industry continue to benefit from the natural capital and services that they provide to our society.

The Scottish Parliament took the decision to recognise the importance of marine protected areas by including them as a key element of the Marine (Scotland) Act 2010. The Parliament placed a legal duty on ministers to create an MPA network and supported my call for offshore marine conservation to be devolved to Scotland.

After the act was passed in 2010, Marine Scotland initiated a project to identify the inshore and offshore MPAs to include in the network. Last month, I designated 13 marine protected areas in Scottish waters, which is why we are here today. We identified those MPAs because they represent our species and habitats, including flame shell beds, feather stars, common skate and ocean quahog, which is a large mollusc that can live for centuries. The MPAs will also protect sand eels, on which many seabirds and marine mammals depend for food, and black guillemot, the only seabird not currently protected under EU birds directive special protection areas.

The largest MPA, at approximately 23,000 km<sup>2</sup>, which is almost the size of the whole of the Scottish Highlands, is the north-east Faroe-Shetland channel MPA. It is the largest MPA in the whole of Europe.

The MPAs bring total marine protected area coverage to 20 per cent of Scotland's seas, which is within the 10 to 30 per cent targets that scientists have called for in international conservation agreements. When developing the network, we took account of a wide range of factors, including geographical range and variation; whether species and habitats were threatened or declining; and the need for replication and connectivity.

We outlined our proposed approach to Parliament in autumn 2010 and our progress in a report to Parliament in December 2012. We then consulted on the MPA proposals in 2013. As the committee is aware, we had an unprecedented response to the consultation from a wide range of interests, including many local communities around Scotland. In total, we received just under 15,000 responses, most of which were in favour of an MPA network. An independent review supported the scientific advice of Scottish Natural Heritage and the Joint Nature Conservation Committee. We worked hard to outline in the consultation how we expected each MPA to be managed. That work must and will continue in dialogue with our marine industries and other

interests to ensure that we get the appropriate management in place.

Last month, I announced new proposals to protect seabirds, basking sharks and marine mammals. We now plan a public consultation on those proposals to complete the network. I look forward to communicating progress on that to the Parliament in the near future.

I emphasise that, because we are very lucky in Scotland to have so many unique species and habitats, we have responsibility for 20 per cent of Europe's waters. We should all take pride in the innovative and landmark legislation that has been passed by the Scottish Parliament in recent years, which has resulted in 30 marine protected areas being designated in Scottish waters.

**The Convener:** Thank you, cabinet secretary. We will discuss the selection and designation process first.

**Dave Thompson:** First of all, I am very supportive of the designations, which are very much needed. I am particularly pleased that the industry in general is supportive of what is being done, too. That is quite an achievement, cabinet secretary—especially bringing the fishermen on board, although I note that not all fishermen are entirely happy.

I would like to pick up on a couple of points in relation to sand eels. First, on the Firth of Forth banks complex MPA, there appear to be competing interests between possible offshore wind developments and the conservation of sand eels. I note that the species has not been included as a feature on that particular site.

My second point about sand eels is broader. I note that they have been included in the broader network for conservation, rather than for recovery. Do you have any comments to make about sand eels, which are an important food species for many fish and birds? Should we be making any representations to Europe about fishing for sand eels? I know that some European countries fish for them, although we do not tend to do that here.

**Richard Lochhead:** It was remiss of me not to say that I have with me from the Scottish Government the two Davids—David Mallon and David Palmer. They have both been in position since day 1 of this journey, which started a few years ago. They have been a huge support to me as a minister, and have played a huge role in getting us to where we are today. I may call on them to talk about their experience of dealing with stakeholders on some of the issues.

On sand eels, three inshore and offshore MPA proposals for sand eels were consulted on and have now been designated. I hope that that shows that we recognise the importance of protecting the

species. As Dave Thompson said, they are food for important seabird species. We have also designated several MPAs for their sand and gravel habitats, which of course are critical for species such as sand eels. Those MPAs include the Firth of Forth banks complex, which Dave Thompson also mentioned.

The conservation of sand eels has been an on-going issue for many years. Danish vessels used to come in and fish our stocks just off Scotland's shoreline. For the past few years, European restrictions on the sand eels fishery have been in place, and those have been renewed year on year. Some of the conservation and protection of sand eel populations at the moment comes through the common fisheries policy and wider European legislation. However, as we are going through the process of designating MPAs, we thought that it was important to listen to representations on the subject, which, as I said, has led to designation of areas where there are sand eels.

The gist of the question seems to be whether there is a need for further action to protect sand eels, and I am not sure that that is the case. I think that we now have adequate protection in place, although I am happy to take more scientific advice—perhaps my colleagues will interject at this point. Sand eel populations are influenced not just by predation but by climate change, and where the sand eel populations are better able to breed and so on is affected by the warming of our waters. To be honest, I am not sure whether any protection over and above the MPAs and existing European protection would make a material difference, but I am happy to take more scientific advice on that. My colleagues will be aware of any need for further protection.

**David Mallon (Scottish Government):** The MPA designation proposals were designed to add value to the existing protection. As Mr Lochhead has outlined, action is already being taken by the European Union, on the advice of the International Council for the Exploration of the Sea, to protect other sand eel populations in the North Sea, and we will continue to keep the ICES advice under review.

**Jim Hume:** The original proposal for the Firth of Forth MPA was for one large bank to be an MPA that would encompass the three smaller banks that the MPA covers now. Last week, we heard that the energy sector is concerned about the Firth of Forth MPA being there at all, whereas the environmentalists are concerned that the MPA will not cover the original, larger Forth bank. How much has the decision for the MPA to cover the three smaller banks been driven by science and how much has it been driven by trying to keep everybody happy?

**Richard Lochhead:** The decision to protect those banks in the Forth has been driven by science.

In our whole approach to the designation of MPAs we have had to work with all sectors although, in some cases, only a small proportion of an MPA will impact on any particular industry. In the designation of the Forth banks MPA, the impact on renewables was a concern—as you know, that is a key area that has been designated in the plans for offshore renewables that we are working on just now. Therefore, as you can imagine, the renewable energy sector is paying close attention to the designations for that area. We have had to be driven by the science to ensure that we cannot be accused of favouritism towards any particular industry. We are having to balance various interests.

Wherever we designate MPAs, we must ensure that we protect the features that need to be protected, but we should not designate areas that are larger than the science requires. Conversely, we do not want to ignore marine features that must be protected.

Although the area will be an MPA, it may well overlap with areas that have been zoned for renewable energy developments, which will now have to take that designation into account. However, the percentage of the MPA that will be affected is tiny and a management plan will have to be drawn up for that area, which will take into account where the features are within the MPA.

If an MPA has multiple features, different parts of that MPA will require different management options. MPA designation does not mean that everything that happens in the MPA will be affected by one decision or another within the management plan. Management will be tailored to the features in the MPA.

I hope that we have struck a balance that will allow the renewable energy developments to proceed. They will have to go through various processes and the management plan will have to be taken into account, but we can have that balance of interests.

**Claudia Beamish:** We heard last week from Lloyd Austin of RSPB Scotland and Professor Bob Furness that the Firth of Forth is a very important place for sand eels and seabirds, as we have discussed this morning. Professor Furness's work has produced many scientific papers on the subject. I seek clarification as to why sand eels have not been noted as a specific feature in the MPA. Concerns have been expressed about the fact that there is no replication of the protection that exists elsewhere.

A number of factors have been highlighted, such as climate change and fisheries. I acknowledge

that there have been fisheries closures in the MPA, but people are still concerned about the issue. Indeed, those concerns have been expressed to me in the interim, between committee meetings. Can we look into the issue a bit further?

11:15

**Richard Lochhead:** Given the clear interest in the sand eel populations, I am happy to arrange for a follow-up scientific note on sand eels to be sent to the committee. As far as the designations are concerned, all I can say is that, as I have pointed out, European legislation contains protections for sand eels, and we have designated on the basis of the habitats being conducive to them. I am not quite sure what you mean in relation to designating sand eels as a specific feature within that.

**Claudia Beamish:** As I understand it—and I am speaking here as a layperson on the subject of sand eels—they have not been specifically designated in the MPA as a feature in need of protection and enhancement. Please correct me if I am wrong.

**Richard Lochhead:** I will check that. I am not sure whether David Mallon wants to explain how he reached that particular position.

**David Mallon:** Claudia Beamish is correct to say that sand eels are not a protected feature of the Firth of Forth MPA. As Mr Lochhead said, protections for sand eels already exist in that area of the North Sea. We had long discussions with Marine Scotland scientists about the best mix of features that we should protect in the Firth of Forth and, given existing measures under the common fisheries policy and our wish to add value through the designations, it was felt that adding sand eels to the mix of protected features on that site was not necessary.

In response to Claudia Beamish's comment about replication, I should point out that there is replication in relation to sand eels in the network and that they are a feature of multiple sites. However, under the legislation that Parliament passed, MPA networks take an adaptive approach that includes regular review. We will wish to keep the issue under review, and our special protection area proposals might also contribute to the broader protection of sand eels, given how much seabirds and other species depend on them.

**Claudia Beamish:** You mentioned the common fisheries policy, and I acknowledge that there have been fisheries closures in the area that we are discussing and that there are other protections for sand eels. However, in light of the cabinet secretary's comments about climate change, does the science show that sand eels do not have to be

recognised as a specific protected feature in the MPA to ensure their future protection? If the science is not clear enough—and I am asking you to clarify whether you think that it is—can it be reviewed between now and 2016, which is when I think the first review will be carried out?

**Richard Lochhead:** As I have said, we will ensure that the committee gets a note that sets out the scientific case.

**Claudia Beamish:** Thank you.

**Richard Lochhead:** However, the thrust of the MPA designation is that there are habitats that are important to sand eels. Because of the other factors affecting them and for the reasons that David Mallon has just given, the scientists advised that we should stick to the habitats. The perspective of the fisheries legislation is purely one of conserving fish stocks and nothing else, and protection under the common fisheries policy has been in place for some time now because of issues surrounding the conservation of sand eel stocks in the Firth of Forth. I will ensure that the committee gets a note to explain the basis of the scientific advice that we received.

**Claudia Beamish:** That would be much appreciated.

**The Convener:** Cara Hilton will now ask some questions about management principles.

**Cara Hilton (Dunfermline) (Lab):** Good morning, cabinet secretary.

I will start with a question about how marine protected areas will be managed and enforced. Given that you have just over two years to implement the MPA network, what are your priorities for the assessment, development and implementation of management measures? How will you ensure that MPAs are more than just lines on the map?

**Richard Lochhead:** As you say, we have until the end of 2016 to put in place the management plans for the 30 MPAs. The work on that has already begun. A management handbook gives guidance on the options that are available for each MPA.

We are hopeful that a culture of compliance has been generated in Scotland. We all recognise that having 30 MPAs that cover 20 per cent of Scotland's waters presents a challenge for traditional policing and enforcement. Given the nature of Scotland's waters, that is quite a challenge, but our experience from speaking to all the stakeholders and industries concerned is that we all want to protect Scotland's precious marine features. We have had a good process in Scotland because people are behind what we are trying to do.

For the past few months, the fishing industry has had a number of voluntary measures in place prior to the management plans being put in place. The fact that it has agreed to implement those measures is a hopeful sign. I am sure that we all welcome the fact that fishermen recognise that a voluntary change of activity should take place in certain MPAs while we wait for the official management plans to be put in place, which will happen before the end of 2016.

There will be enforcement measures. Marine Scotland is responsible for compliance in relation to not just fisheries protection but the MPAs. Our ships, our aircraft and our other resources will play a role in that, but it will not be achievable without a culture of compliance among all the users of Scotland's seas.

The main protection against MPAs simply being lines on the map is the fact that they are designations. That means that all the licensing authorities that consider any future activities in our waters must take them into account. The fact that we have designated MPAs provides a copper-bottomed guarantee that things will be different, as it means that it will be a legal requirement for those designations to be taken into account when consideration is given to future developments. We hope that that will work well. Over and above that, we will have the management plans, which will lead to protective measures being put in place.

**The Convener:** Angus MacDonald has a related question.

**Angus MacDonald:** I want to pick up on the voluntary management measures that the cabinet secretary mentioned. As we have heard in evidence, the Scottish Fishermen's Federation, the Scottish Creel Fishermen's Federation and the Western Isles Fishermen's Association, in conjunction with Marine Scotland, have implemented voluntary measures for the south Arran, Wester Ross and upper Loch Fyne MPAs. In due course, those voluntary measures are due to be replaced by statutory measures. Although good sense seems to be prevailing among the majority, does the cabinet secretary feel that fishermen who are members of other associations or unaffiliated bodies are likely to stick to those measures? If he does, how will that be monitored and policed?

**Richard Lochhead:** We have done all that we can to work with all the relevant interests that use Scotland's waters. Over the past few years, we have gone to great lengths to involve the fishing industry, and we have relied on its expertise to understand the impact on fishing patterns. Without the input of the fishermen, we would not have been able to deal with the issue properly, because they have given us intelligence on their fishing

patterns and the crossover with the proposed MPAs. I welcome that co-operation.

We are a great deal further forward than we have ever been. The fact that we have a voluntary arrangement in place that is relevant to 11 separate locations across three of the newly designated MPAs is an extremely positive sign. I hope and I trust that all the fishermen, regardless of which organisations they are members of, will pay heed to the voluntary measures. There are examples elsewhere in Scotland where all sectors have heeded voluntary fishing measures. Those examples relate not to MPAs but to other issues, such as inshore fisheries. My point is that there is no reason to think that fishermen will not heed these voluntary measures, irrespective of which fishing organisation gets round the table to agree them.

The backstop is that the management plan will be put in place, with enforcement resources that will, I hope, ensure that the measures are heeded. However, I hope that, because everyone is behind the thrust of what we are trying to do, there will be a culture of compliance that works.

**Angus MacDonald:** We all hope that every single fisherman will adhere to the voluntary measures.

This week, Scottish Environment LINK highlighted to the committee evidence of two MPAs—the small isles and Wester Ross—that shows the stark differences between the features needing protection and the management approach. That requires close examination. For example, LINK's submission says:

"LINK members have received feedback from within their own memberships expressing concern that the new MPAs are simply 'paper parks', given that some damaging activities have been allowed to continue in newly-designated MPAs. There has already been disappointment amongst coastal community groups that scallop dredging will continue within areas of sites now designated for protection".

I am keen to hear your views on that matter.

**Richard Lochhead:** Let us return to the question of science. If there is scientific evidence that damage is being caused, the management plans will take that into account and respond to it because we do not want damaging activity that will harm our marine features. I am not saying that any one particular organisation is doing that; rather, I am just saying that the perception that damaging activities are taking place in different parts of Scotland is communicated to me by many communities, fishermen and organisations. We must always gather the scientific evidence first to see whether that is the case, because it is not the case that fishing activity per se causes damage. In many of the MPAs various fishing activities can continue without disruption because they do not

cause damage but in other cases where there is evidence of damage the management plan must take that into account in order to stop such damage.

There is no broad-brush or one-size-fits-all approach to fishing in MPAs. Each case will be looked at on its merits. In some cases, certain fishing activities will continue without disruption while in other cases the fishing activities may have to move elsewhere to avoid causing damage. If there are examples of damage being caused, I want to hear about them. As we put the management plans together, I want to ensure that we prioritise the plans for those particular areas. Therefore, I urge any organisation or MSP, or the committee, to give me those examples and we will make sure that the management plans for those areas are prioritised.

**Angus MacDonald:** Thank you. Convener, I have an issue to do with the existing fisheries closure areas. Should I raise it now?

**The Convener:** Why not, if it follows on.

**Angus MacDonald:** Are the seven fisheries closure areas and the features in them that are considered to be contributing to the network but are not designated as MPAs for nature conservation under Scottish or European legislation subject to the equivalent safeguards and requirements for monitoring, reporting and review as they would be if they were designated MPAs? There is concern that, because those areas are not designated as conservation sites under the definition of the Marine (Scotland) Act 2010, they will not be managed, monitored, reported on or reviewed in the same way as if they were fully fledged MPAs.

**Richard Lochhead:** Are you asking about areas that are subject to restrictions?

**Angus MacDonald:** Yes.

**Richard Lochhead:** We have various levels of protection in place for Scottish waters. As you know, those usually emanate from Europe via the habitats directives, the common fisheries policy, special protected areas or designations. Those all form part of Scotland's MPA network. The areas that we are designating are often multi-feature areas. That introduces a new form of designation, because those areas would not otherwise have been designated. However, the existing special protected areas and so on will form part of the overall network of areas in Scotland. Together, the designations that are in place already through Europe as well as the 30 MPAs that we are designating will provide a big network of protection in Scottish waters.

11:30

In areas where there are already restrictions, no one should have any fear that there will be some sort of lighter-touch approach. They will be subject to the protection that exists at the moment. Earlier, we discussed the existing protection for sand eel populations in the Firth of Forth. Legislation to close the sand eel fisheries in those areas was passed by Parliament and is in place. That is not light touch—that is legislation that the Parliament passed to close those areas via the common fisheries policy. Of course, MPAs are more likely to be multi-feature areas and to address a much wider variety of features than designations under European legislation, which are usually specific to one species or, in the case of fisheries protection, one stock.

**The Convener:** We move on to questions on management principles from Jim Hume.

**Jim Hume:** My question leads on neatly from that answer. One of the key policies in the draft management handbook for MPAs is to use the “best available scientific information”. The cabinet secretary mentioned that scientific information has been used for the Forth banks and for decisions on whether to dredge for scallops. However, we heard from witnesses last week that the best available scientific information might not necessarily be good science. We also heard from one of the energy company representatives that the evidence is often produced by the energy sector when it does environmental assessments, which are then passed on to Government. Of course, some of those assessments are commercially sensitive, so they cannot be used more widely. What are your thoughts on the difference between the best available scientific information and good science? Is the best available scientific information robust enough to ensure that we meet good environmental standards?

**Richard Lochhead:** As a society, we have more knowledge than ever before about what lies beneath the waves in Scottish waters. Huge progress has been made over the past few years alone, given the extra work that has taken place as a result of the Marine (Scotland) Act 2010, but there has also been progress over the past few decades. Scotland has a lot of expertise in marine science. We mentioned the good work that has been happening at SAMS. Marine Scotland science plays a crucial role, and we take advice from the JNCC.

SNH, the Scottish Environment Protection Agency, Marine Scotland science and other organisations in Scotland have been working together to build up Scotland’s scientific knowledge of our marine features. Of course, that knowledge is not complete and I am sure that

there is still a long way to go. We are bringing forward for consultation four search locations for future MPAs or other designations for mobile species. We are still building our scientific knowledge in some areas, but we are confident that we have enough scientific knowledge and it is good enough to designate the 30 MPAs that I have mentioned.

There is always a debate on the accuracy of science, but we have to take a precautionary approach and base our decisions on the available scientific knowledge. The alternative is to take no decisions and make no designations. We are confident that we have enough scientific knowledge. Jim Hume mentioned the renewable energy sector—ironically, the offshore renewables industry has built up a fantastic knowledge base. That has gone into the mix and has helped our understanding greatly. Scotland has made huge leaps in marine scientific knowledge in the past few years and I am confident that we have a good basis on which to take decisions.

**Jim Hume:** Obviously, it is not just the big energy companies that are doing science—we heard evidence that amateur naturalists are doing it, too. For example, they found out about the maerl beds off Arran. I wonder how quickly organisations such as the Government can react to new information that comes from the big energy companies or from amateur naturalists who find new information. For sure, we are more knowledgeable than we were yesterday but, as we all know, there is lot of sea out there.

**Richard Lochhead:** We do take into account information that we get from local communities. One of the reasons why we were keen to have community-driven MPAs as part of the MPA designation process was that we wanted to hear the views of communities. Clearly, when we hear from communities about marine features that they want to protect and propose for MPAs, we have to have official scientific investigation to make sure that what we are hearing is accurate. However, we built into the process the possibility of communities bringing those special marine features to our attention. A number of the MPAs that were finally designated originated in proposals from third parties—not Government or our own scientific institutions but environmental organisations or, in the case of Arran, local communities. The process is very open, to allow proposals to come from outside of Government and outside of official channels. Clearly, we have to check to make sure that they are underpinned by verified science, but that process has worked.

**Jim Hume:** You talked more about what has been and where we are now; I was thinking of future discoveries, if you like, on our sea bed. How

quickly can the Government react to new discoveries of information regarding the sea bed?

**Richard Lochhead:** In terms of the reporting mechanism to Parliament, we have to have the management plans in place by the end of 2016 and 2018 is the next deadline for reporting back to Parliament on progress with the MPAs.

A lot of work lies behind that. We have all our scientists in Scotland working together. They have open channels and liaison with communities and environmental organisations, so there is ample opportunity for people to feed in scientific discoveries or knowledge to that process. It is a very open process. As I said before, the evidence that it is working is that some of the MPAs that have been designated have originated from proposals from third parties.

**The Convener:** Dave Thompson has a supplementary on that.

**Dave Thompson:** Thank you, convener. It is as much a comment as a supplementary. I agree with what Jim Hume is saying. If maerl beds, or whatever, are discovered, we need to make sure that they are protected. However, the very fact that they have been discovered shows that they have not been destroyed. I do not know how long it takes to establish such a bed, but if they are there just now, with all the commercial activity that is going on, the conservation is already happening, in the sense that our fishermen and others have not destroyed them. If they are there, that is a very positive thing. We need to be careful. We need to accept and realise that the folk who are fishing our seas have just as much interest in making sure that the environment is good, given how they make their living—although I am not saying that they are all perfect. We should not just go rushing in to designate something every time we find it, unless it is particularly precious. Remember that such features are there despite the commercial activity that has been going on for centuries.

**Richard Lochhead:** That is a very good point, which links into the previous question from Jim Hume about how we take into account local knowledge and input into science. Often the users of our seas are the people with local knowledge; they know which areas to avoid so that they do not cause damage. Notwithstanding that, of course we are aware that there are areas that have been damaged, which is why there is a justification for this whole new approach to marine conservation. I guess we will never know what was there previously that is not there now. We can only work with the information that we have, but you are quite right to say that the fact that we have so many special marine features beneath our waves in Scottish waters shows that it is possible for marine activity and industries to work side by side with marine conservation.

**The Convener:** Alex Fergusson has another supplementary question.

**Alex Fergusson:** Thank you, convener. My question is about the robustness of the scientific evidence that is being used in drawing up the plans. Angus MacDonald mentioned quite rightly that LINK members have apparently received fairly damning feedback that some view the new MPAs as “paper parks”. That is quite robust opposition to what has been put in place.

I wonder whether some of that disquiet is brought about by situations in which the scientific evidence that is available has perhaps not been used to the fullest extent in drawing up maps of management zones. I refer you to Scottish Natural Heritage’s commissioned report 764, “Upper Loch Fyne and Loch Goil pMPA and Wester Ross pMPA—the identification of conservation management areas to support protected feature recovery”, which shows a fairly typical example of the point that I am trying to get at, which is an identified maerl bed that lies outwith the area that is targeted for management. That gives rise to concern that although there is scientific evidence for such a bed, it has not been taken into account when drawing up the area for management. Can you comment on that?

**Richard Lochhead:** I will come back to that point in a second, but first I want to address the comment on MPAs as “paper parks”. I just want to recap the process of how we got to where we are today. The big feature of public policy in relation to marine conservation is designations. The most important aspect to bear in mind is that we are designating areas. That process is followed by management, but designation in itself is an acknowledgement that a feature is very important. Designation is the backdrop to everything that we are talking about. Society has investigated, discovered and now designated maerl beds, for example, as a special feature that we want to protect.

In some cases, there will be no activity in the MPAs. I do not know what the management plan will look like in those cases, but it will not be as detailed as the management plans for areas where there is a lot of activity. People might think that an MPA is designated on paper but that nothing will change. However, the mere fact that an area is designated protects it from future activities, which would have to be licensed—attention would have to be paid to the designation. Designation in itself is an important point to bear in mind. Many of the MPAs will not have much activity at all; many are far out to sea, with very little activity—not even any fishing activity. It is disparaging to describe them as “paper MPAs”; there will not be much evidence of a change in

activity, because there was no activity in the first place.

In areas where there is activity, the management plans will be based on scientific advice. Someone looking at an area of sea that has been designated as an MPA and seeing some activity will think, "Hold on a minute, that's an MPA but I can still see the activity", so the challenge is to make sure that we have scientific evidence that the activity that has been witnessed is damaging the marine environment. Pelagic fisheries, for instance, do not damage marine features. A bystander may see a fishing vessel that is fishing for pelagic stocks, which swim near the surface of the water, and make the assumption that there is a lot of activity in that MPA, yet there is no scientific evidence whatever that the activity is damaging the marine features. Everything will be backed up by science.

I will ask David Mallon to respond to the question about features being identified that are not in the MPAs, because he has been closely involved in the process. The original approach was that, where several features were replicated in various sites, we had to make sure that the features were protected by designating at least one of those sites, so that the feature would be protected as an example of what is in our waters. If there were various locations all over the place with the same feature, it was built into the original process that the bottom line was that some of those areas had to be protected, but not necessarily all of them.

**Alex Fergusson:** I understand that, but I merely gave an example of why some people have less faith in the scientific processes that have been used than you suggest. It is not I, but others who are calling them "paper parks". I am giving an example of why people are questioning the science that is used in drawing up the management zones.

**Richard Lochhead:** Maybe that is a question of getting the information out there during the decision-making process. Right back at the beginning of this journey, we recognised that our waters are used for all kinds of activities, including economic activity, so we had to strike a balance. No doubt there are some people who would like there to be no economic activity in our waters because it could cause pollution or damage. Society does not take that view: society takes the view that we need economic activity, but we must strike a balance and protect our marine environments. That is why we are now much further forward.

**Alex Fergusson:** Okay. I am happy with that. Thank you.

11:45

**Claudia Beamish:** At last week's meeting, we heard from Lloyd Austin, of RSPB Scotland, which thinks that

"The MPAs designated are not yet ecologically coherent meaning that efforts must be redoubled to ensure this network delivers for the environment, industry and communities."

To what degree is there an ecologically coherent network?

We also heard last week that there need to be management objectives for whole sites. If a whole site is not designated, I am puzzled as to how enforcement action can be taken to protect the features that need protection.

**Richard Lochhead:** We will do our best to get this right. In 2018 we will report back to Parliament on progress. Lessons will be learned—of course they will be learned; this is the first time that we have designated MPAs. I hope that in 20 or 30 years people will be able to say that there is in place a great system that was developed over time.

MPAs can be relatively large areas of sea, with many different features. They will be mapped out and the co-ordinates will be available, which is how the areas will be policed and the system enforced. The management plan must address the various features in MPAs, and the measures in the plan will not necessarily apply to all parts of the MPA.

Let me put things in perspective. The Fladen fishing grounds are a huge area of the North Sea, about 1 per cent of which will be subject to measures. We must not get carried away and subject huge areas of sea to big restrictions. The management plans will take account of activities and the features that are to be protected in each MPA.

**Claudia Beamish:** I am not trying to put words in your mouth, but I take it that you are reassuring me that even if the whole area is not managed, because it is very large or for other reasons, protection of the features and habitats in which species thrive in a protected area will still be enforceable.

**Richard Lochhead:** Yes. As I said, we are on a learning curve. Until the management plans are in place and we are able to reflect on their success, we cannot fully answer such questions. The key point is that we are doing it, and for the first time. I am confident that the outcome will be greater protection.

**Claudia Beamish:** How can an ecologically coherent network be developed, not just to prevent further degradation, but to enhance our marine environment and enable its recovery? We do not

hear enough about enhancement and recovery in relation to the marine environment.

**Richard Lochhead:** Defining “recovery” is one of the trickiest aspects. We clearly want some marine features to recover, but to what level? We hope and expect that some features in MPAs will recover naturally. It would be challenging to lay down rules and regulations on recovery in the management plans, because we would have to define “recovery”. We will be guided by the science, which is an on-going exercise. Recovery is an objective, but how we define it and lay down plans for recovery in a particular site is a bit more challenging.

**Claudia Beamish:** What about enhancement of our marine environment, which is a commitment in the Marine (Scotland) Act 2010?

**Richard Lochhead:** Again, all I can say is that the management plans will be guided by the science. They will be substantial documents that will apply to each MPA in Scotland. We will therefore have 30 management plans, which will be guided by the science.

**Alex Fergusson:** We have heard evidence and received written evidence that suggest that, if the network is to be ecologically coherent, further MPAs or designations will need to be added. Do you agree with that? When the matter comes back to Parliament in 2018, will that allow an opportunity for further designations and areas to be added, if that is believed to be necessary to deliver what Parliament asked for under the Marine (Scotland) Act 2010, or is the proposed network it?

**Richard Lochhead:** No, that is certainly not it. There is no doubt that we will continue to learn more about Scotland’s seas and our marine features. The more we build up that scientific knowledge, the more MPAs will, no doubt, be designated in due course. Who knows where they will be and how many there will be? I have already indicated that we are currently considering mobile species in some of the search locations that are being looked at. That will no doubt lead to future mobile species designations.

It is very likely that there will be more MPAs, and Parliament will have a duty to keep on reflecting and reporting. As I said, the next deadline for that is 2018.

**The Convener:** Are adequate resources available to extend our knowledge and regulate, to underpin the roles of the regulators and scientists?

**Richard Lochhead:** We have made huge progress with the science in the run-up to the designations. So far, the resources that we have put in to ensure that we can get the management plans in place have been adequate. Providing

adequate resources is always a challenge, given the wider financial considerations. We will have to keep under review that we have ensured that we have the resources available. Even getting the 30 management plans in place by the end of 2016 is a huge challenge.

We have given extra funds to various surveys to get the designations in place, and future budget decisions will take into account the need to keep up momentum.

**The Convener:** I am particularly interested in those decisions, because we have maintained to a laudable degree scientific research funding in the Scottish budgets, which is really important. However, the work of SAMS and the Environmental Research Institute in Thurso, which is looking at all aspects of life in the Pentland Firth in particular, requires a guarantee that there will be a flow of cash to them. Do you see an expanding role for the science and research that we can afford? Have we looked adequately at the costs that will be required to extend that knowledge?

**Richard Lochhead:** Some of the decisions are very long term. I am content that adequate resources are currently being made available for what is required in the short term. As you indicated, we have done our best to protect the science budgets in the Scottish Government, despite the big cuts that we have had to take. There have been efficiency savings, and the budgets for Marine Scotland have not increased. There has been a reallocation of resources within Marine Scotland, but I will not sit here and say that we have increased its overall budget, because we have needed to make quite hard efficiency savings. However, in respect of overall budget cuts compared with what has happened elsewhere in the UK, we have managed to protect the budgets as far as we can.

A great boost to scientific knowledge in Scotland comes from the private sector, of course. We must remember that the oil and gas sector commissions a lot of environmental work and science. The offshore renewables sector has to go through environmental assessments for any of its projects and plans, and it has invested a lot in science. Many of our scientific institutions in Scotland are therefore benefiting from private sector investment.

**The Convener:** The resources include those for the regulators. Now that Marine Scotland has responsibility for both fishing and marine protection, are the ships and aircraft that you have adequate for the task?

**Richard Lochhead:** Before the advent of Marine Scotland, we used to have the Scottish Fisheries Protection Agency, but the changing role

of Marine Scotland over the past few years has involved our vessels having a wider remit that is about not just fisheries protection, but marine responsibility for the designations and so on, so we have to keep the situation under review. In addition to our staff, we have three ships, two aircraft and various other smaller vessels—rigid inflatable boats—which are attached to the ships and are used more for inshore activity.

That emphasises that we are very reliant on the culture of compliance that we spoke about earlier. If we do not have everyone on board to make the policy work, it will be challenging. We will have to work with people to ensure that we are all going in the same direction and that all the users of Scotland's seas want to protect our marine features. We cannot simply rely on hard enforcement all the time, because that is not the best way of delivering our objectives. As I said, we will keep the situation under review.

**Nigel Don:** At last week's meeting, Calum Duncan of the Marine Conservation Society spoke about "citizen science". Clearly, there are a lot of very capable people around who observe all sorts of things and report them accordingly. Does the Government have any particular perspective on how that can be encouraged?

**Richard Lochhead:** I am always open to suggestions about how that can be encouraged. Perhaps it is something that we should give a lot more thought to. All I would say is that, as I indicated, we have gone to great pains to ensure that our work to date has been very open and transparent, and we have invited contributions from outside the official channels and the Government. We must have an authoritative validation of the science, but when it comes to influencing the agenda, highlighting issues and inputting into the process, we are very keen on supporting what has been referred to as citizen science.

The process north of the border and the way in which we have approached our designations, the Marine (Scotland) Act 2010 and everything around that have been highly commended compared with the approach of the rest of the UK. We have been very inclusive. I am not saying that everything is perfect, but we have had a lot of feedback and public comment that—as I think the committee has heard in the past week or two—the process that we have had in Scotland has been very inclusive.

**The Convener:** I think that Graeme Dey wants to explore just how inclusive that process has been.

**Graeme Dey:** My question is on the practicalities that can arise in implementing MPAs. Mick Borwell of Oil & Gas UK raised a concern with the committee over a particular management

measure at a site level. He read the recommendation that

"deposited material should meet local habitat type"

as meaning that no rocks can be placed on a mud or sand sea bed that is devoid of rocks. His point was that the industry uses rocks to stabilise pipelines to protect the content and as a safety measure for the fishing fleet. Is his concern warranted? Is there scope for commonsense solutions to be found for such specific circumstances?

**Richard Lochhead:** The designations are there to protect, so if the scientific evidence is that using a particular material in a particular location would endanger a marine feature that we want to protect, it is clear that that will not be accepted and the licence will not be granted for the pipeline in the example that you gave. However, the system is also designed to ensure that we do not stop development at sea. It is about ensuring that developments are appropriate and in the right locations, and that a management plan is put in place for any development that takes place so that it takes into account the marine features.

MPAs are not about stopping developments; they are just about ensuring that they do not damage the marine environment. That may mean moving a development, doing it in a different way or whatever. That is why, once a designation and management plans are in place, anyone who wants to lay a pipeline on Scotland's sea bed will have to apply for a licence, and the authority that grants the licence must refer to the designations.

**Graeme Dey:** So, in reality, for permission to be granted, a different means of securing a pipeline would have to be found.

**Richard Lochhead:** Yes—if the feature in question was protected.

**Graeme Dey:** Thanks for the clarification.

**The Convener:** Nigel Don has some points on further designations.

12:00

**Nigel Don:** This is an issue that we picked up on last week. I understand that a further four marine protected areas have already been assessed but not designated. That is of particular interest to those who are concerned about dolphins, for example, which seem to be particularly covered by those areas. I am not sure—and I do not think that anybody else is—what the process is, whether those areas are being consulted on and when they will be designated. The question is broadly about timetables and uncertainty, cabinet secretary. Will you enlighten us, please?

**Richard Lochhead:** We are lucky that, in Scottish waters, we have some special species of whales, dolphins and basking sharks, for instance. They are spectacular species and we want to do what we can to protect them when they are in Scottish waters but, by their nature, they are mobile species. Therefore, designating MPAs to protect them is a lot more challenging than designating MPAs for static features. That is why it is taking longer.

We hope to consult on those four MPAs in 2015, but the scientific justification for any particular MPA is taking longer because the species are mobile and we have to understand where their breeding grounds are. Once we are confident that we have that information and it forms the basis of designating MPAs for mobile species, we will consult.

**Nigel Don:** I understand the point about the science. Clearly, if creatures move around, it is a tad difficult to work out where they prefer to be most of the time. I am sure that the scientific community accepts that. Is there any constraint other than good science on getting those MPAs designated as soon as possible?

**Richard Lochhead:** It is August 2014 and I am saying that we will consult in 2015. Most people to whom I have spoken understand why it is taking a bit longer to get those MPAs in place. The consultation will be in 2015 and we will get the designations in place as soon as possible thereafter.

**The Convener:** Claudia Beamish will ask a bit more about the process.

**Claudia Beamish:** Paragraph 210 of Scottish planning policy states:

“Authorities should afford the same level of protection to proposed SACs and SPAs (i.e. sites which have been approved by Scottish Ministers for formal consultation but which have not yet been designated) as they do to sites which have been designated.”

Will you comment on whether the draft SPAs should be considered as proposed SPAs and treated as if they have been designated for the planning process?

**Richard Lochhead:** That is quite a complicated question.

**Claudia Beamish:** I know. The question is really whether, because the SPAs have been proposed, they can receive some protection while the consultation is going on until a possible designation.

**Richard Lochhead:** At the moment, as you know, there are 14 proposed locations for SPAs. Again, we will consult on those in 2015. Are you saying that we should somehow put measures in place before the official designation?

**Claudia Beamish:** I am asking a question. I understand that Scottish planning policy—I quoted the paragraph for you—highlights the issue that, once an area has been proposed for an SPA, it could have protection during the formal consultation, before it is designated.

**Richard Lochhead:** I will reflect on that, because the process is already under way for the SPAs that we are talking about—as I said, there are 14 of them—and I will have to check with the authorities whether protection is in place at the moment, albeit not on a statutory footing. The processes that are being followed for those 14 SPAs are no different from those that were followed for the SPAs that are already in place in Scottish waters, so there is no difference in the way in which they are being treated. However, I will check the point and get back to the committee.

**Claudia Beamish:** That would be helpful.

I have an even more difficult question on seabird protection, to which I certainly do not know the answer. Will the network and the seabird protection measures move towards completion once the areas that are going to be designated have been designated? Obviously, that will be done on the basis of the best available science at the moment; in the future, the situation might be different. Do you think that the network will be quite robust after the designations have been made?

**Richard Lochhead:** Yes. It is always dangerous for me to say that something has been completed, but the 14 areas that we have proposed have been warmly welcomed, and we are quite confident that that will take us much further forward and address the concerns that have been expressed about a lack of protection in some areas.

As you said, we will be guided by scientific knowledge. As more science becomes available, we will have to respond to that in due course. David Mallon might want to comment on the process.

**David Mallon:** The experience with SPAs on land is that there is a need to keep under review whether the sites are sufficient to meet the needs of the bird species populations, and that is likely to be the case in the marine environment as well. The proposed sites are the ones that SNH and JNCC have been able to identify. We will have to keep that under review, as Mr Lochhead said, and the 2018 review will be the first opportunity to do that.

The position is similar on the other features that are contained in the network. There are some features that SNH and JNCC had sought to represent, for which data was not available, and we will keep those features under review as well.

**The Convener:** Thank you very much, cabinet secretary. It is obvious that we are on a kind of escalator: we learn more as we go along. We are at a point at which we have made the first major pioneering move, which has been warmly welcomed by many people, and we hope that the learning process will allow people to take on board the science that has been gleaned and apply it to ensure that the MPAs work.

The increased involvement of local communities will be very important, along with that of inshore fisheries groups and so on. We hope that you can make all those things work together and put the jigsaw together, so that we have clean seas and an improving environment.

I thank you and your officials very much for your evidence today. Before we close, I would like to say that this is our last committee meeting before the independence referendum. Although we have been back for only a short while, the committee has covered some important work on MPAs and tenant farming. I thank all those who have given evidence and worked with us, both in front of and behind the scenes.

*Meeting closed at 12:08.*

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