



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 19 November 2014

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**Wednesday 19 November 2014**

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**29<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- Roderick Campbell (North East Fife) (SNP) (Committee Substitute)
- Jeff Gibbons (Scottish Government)
- John Ireland (Scottish Government)
- Jo O'Hara (Scottish Government)
- Rachel Rayner (Scottish Government)
- Neil Ritchie (Scottish Government)
- Dave Thomson (Scottish Government)
- Ian Turner (Scottish Government)
- Paul Wheelhouse (Minister for Environment and Climate Change)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

Wednesday 19 November 2014

[The Convener opened the meeting at 09:32]

### Decision on Taking Business in Private

**The Convener (Rob Gibson):** Good morning, everybody, and welcome to the 29th meeting this year of the Rural Affairs, Climate Change and Environment Committee. Before we start, I remind everyone to switch off all mobile phones and so on. Members may be using tablets for the meeting—but not for playing sudoku.

We have received apologies from Graeme Dey, for whom we welcome Roderick Campbell as substitute.

Agenda item 1 is to decide whether to take in private item 6, which is consideration of our work on Scotland's climate change targets. Are we agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Scotland Act 1998 (River Tweed) Amendment Order 2015 [Draft]

09:33

**The Convener:** Under agenda item 2, the committee will take evidence from the Minister for Environment and Climate Change on a draft order that has been laid under the affirmative procedure, which means that Parliament must approve the instrument before its provisions may come into force. Following this evidence session, under agenda item 3 the committee will be invited to consider the motion to approve the draft order.

I welcome the minister, Paul Wheelhouse, along with Jeff Gibbons, who is policy manager for salmon and recreational fisheries, and Johanna Irvine, who is a principal legal officer at the Scottish Government. Good morning to you.

I invite the minister to make an initial statement.

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Thank you for inviting me to speak to the draft order, which has been laid for Parliament's approval.

Members of the committee will be aware that freshwater fisheries management and conservation are, largely, regulated by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, but separate arrangements are in place for the border rivers. Following the committee's consideration of the provisions in the Aquaculture and Fisheries (Scotland) Bill, an amendment to the 2003 act came into force in September 2013 to provide a new enabling power allowing the Scottish ministers to create a regime for tagging salmon that are caught in Scotland.

I confirm that it remains our intention to consult fully on the structure and extent of any future carcass-tagging scheme, and I am currently considering the options, alongside the wider recommendations that are emerging from the report that was produced following the independent review of wild fisheries.

However, it is necessary to address a technical issue with the current legislation to ensure that a single carcass-tagging system can be introduced across the whole of Scotland. The 2003 act and the amendments to it that were brought in last year do not extend to the River Tweed, which, as a border river, has its own governance. The governance of the River Tweed is provided by the Scotland Act 1998 (River Tweed) Order 2006 (SI 2006/2913), which allows a whole-river management scheme to operate across the border. As a consequence, the order that we are

discussing today will amend the 2006 order by inserting a new power that will allow for the creation of a regime for tagging salmon that are caught in the Tweed district, and will ensure that when such a scheme is introduced in Scotland as a whole, that can be replicated for the Tweed. The power will allow provisions to be made about the nature and form of the tags, record keeping and enforcement.

The purpose behind the regime will be to enhance existing conservation measures for wild salmon and to ensure that fish that are caught in Scotland and which find their way to market are traceable. It will allow tagged fish to be measured against fish stocks and it will supplement existing mechanisms for identifying unlawfully caught fish. The detail of the tagging regime for the Tweed district will be set out in a separate order, and the detail of the scheme for the rest of Scotland will be set out in regulations that will be made under the 2003 act. I confirm that I have been in correspondence with my counterparts in the United Kingdom Government, who will be taking the order through the UK Parliament.

I hope that that provides a brief overview of the order and of our longer-term strategy. I will be happy to answer any questions.

**The Convener:** Thank you very much, minister.

I will start with a geographical question. How much of the Tweed basin is in Scotland, roughly speaking, in terms of the catching of salmon, overall?

**Paul Wheelhouse:** If this was a game of Trivial Pursuit, I would fail miserably. I will look to Jeff Gibbons, who might have some knowledge of that. If he does not, we can come back to you with the detail.

**Jeff Gibbons (Scottish Government):** The River Tweed Commission area extends 5 miles out to sea and includes the coastline between Holy Island and Cockburnspath.

**The Convener:** As well?

**Jeff Gibbons:** Yes.

**The Convener:** I was thinking about the tributaries that flow into the Tweed from England and the length of the Tweed that has England and Scotland on either side of its flow.

**Paul Wheelhouse:** We will get the measuring tapes out and provide you with an answer to that.

**The Convener:** It is very important that we get positive signals from London that the UK Government will be doing something similar. I believe that most of the Tweed is in Scotland as far as the catching of salmon is concerned.

**Paul Wheelhouse:** It is worth pointing out that carcass tagging already goes on in England. We are bringing in our own regime.

**The Convener:** That is fine.

**Paul Wheelhouse:** Conservation measures are already in place in England. Unfortunately, we are having to catch up. For the committee's benefit, we can provide some detailed information in response to your question.

**The Convener:** I am sure that, because there are fewer salmon in England, the tagging process is easier there. My point is that we are keen that best practice be followed.

**Jim Hume (South Scotland) (LD):** As someone who lives on one of the tributaries of the Tweed, I would guess that about 90 per cent of it is in Scotland, but that is just a Trivial Pursuit guess.

Why has there been no general consultation on the order? How will you get the message out to interested parties?

**Paul Wheelhouse:** I will ask Jeff Gibbons to talk about the process that we have been going through. We have engaged closely with the authorities in England about concerns that they have. I believe that, so far, they have indicated that they are happy to progress the proposed measure with us. We have done a first scan at Government-to-Government level to establish whether the Department for Environment, Food and Rural Affairs has concerns about the measure. The Secretary of State for Scotland has been copied in, too, because of the cross-border nature of the activity. Nothing has been flagged up to us yet. Jeff Gibbons will talk through the consultation process.

**Jeff Gibbons:** As you know, the power in the order is an enabling power; the specific aspects of the scheme that will follow are not detailed. A full consultation on how the scheme will look across Scotland will follow in due course, as the minister indicated.

We have spoken to the River Tweed Commission about the purpose of the order. It is aware that we want to encapsulate as much of Scotland as we can, and it is quite content—indeed, it has been pushing for carcass tagging for some time. As far as consultation about the enabling power is concerned, we have spoken to the commission, and a wider consultation on how the scheme will look in practice will follow in due course, as the minister said.

**Paul Wheelhouse:** I add that the Crown Estate has also been consulted. Jeff Gibbons was referring to the River Tweed Commission.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Is the scheme being looked upon in any way as a pilot scheme for something for the rest of Scotland, or is it a completely separate issue, given the rather unique nature of the Tweed?

**Paul Wheelhouse:** The latter point is the most relevant one. As I said in my opening remarks, at the moment we are in a situation in which we cannot apply a single tagging scheme across the whole of Scotland. The instrument is a technical measure to make sure that we can take the Tweed within any scheme that comes forward.

It is important to put the matter in the context of the fisheries review—we are scanning through the recommendations from Andrew Thin and his group and clearly we want to come forward with a comprehensive package rather than do things piecemeal. However, the order will at least allow us to move forward so that when we produce detail on the carcass-tagging scheme that we set out in the Aquaculture and Fisheries (Scotland) Act 2013, we will be able to apply it across the whole of Scotland rather than having to do two separate schemes—one for the areas that straddle the border and one for the rest of Scotland. Jeff Gibbons may want to comment further on that.

**Jeff Gibbons:** Agreeing to the enabling order at this stage will allow us to progress wider options. Should we look, in the first instance, to a pilot as an option, it will sit in with those wider options, depending on the wider considerations.

**The Convener:** As there are no further questions, we move to agenda item 3, which is to consider motion S4M-11509, which asks the committee to recommend approval of the draft order. Officials cannot take part, at this stage, which is the opportunity for debate. I invite the minister to move the motion.

*Motion moved,*

That the Rural Affairs, Climate Change and Environment Committee recommends that the Scotland Act 1998 (River Tweed) Amendment Order 2015 [draft] be approved.—  
[Paul Wheelhouse.]

*Motion agreed to.*

**The Convener:** I thank the minister and his officials. We will change witnesses and bring in the witnesses for draft budget scrutiny. I think that the minister is going to stay with us for the next item.

**Paul Wheelhouse:** I thought that that was my opportunity to escape.

## Draft Budget Scrutiny 2015-16

09:44

**The Convener:** I welcome the minister again. He is accompanied for this quiz regarding the Scottish Government's draft budget 2015-16, on the themes of forestry and Scotland rural development programme climate issues, by Jo O'Hara, who is deputy director of the Forestry Commission Scotland; John Ireland, who is deputy director in the low carbon economy division of the Scottish Government; and Neil Ritchie, who is branch head in the natural assets and flooding office of the Scottish Government. Good morning, everybody.

I refer members to the papers and I shall kick off with the first question, which is about the delay in publishing the document that shows how the budget supports measures to reduce Scotland's climate emissions. Since the delay in its publication hinders effective scrutiny, can the minister commit to publishing it alongside the draft budget next year?

**Paul Wheelhouse:** Having been a member of the Finance Committee in the past, I recognise that there is great interest in having that information simultaneously with the budget. However, I shall explain for the committee's benefit the process that is involved. Although there is no statutory requirement to produce the information and no statutory specification as to when it should be produced, we have made every effort to produce it as near as we can to publication of the budget. I believe that last year it took five weeks to produce the information, and this year it took three weeks.

We had an unusual situation with the referendum, and during the summer we had a delay in the budget process, which is happening slightly later than it would otherwise, so the team has done a good job of collating the level 4 information and producing it within three weeks. It is difficult; we have to wait until we have the finalised budget before the carbon assessment of the budget can be produced and the team can produce the information that you are now relying on to assess the carbon intensity of the Government's spending programme.

The point that I am making is that there is a difficulty in producing the documents simultaneously, and we have made every effort to ensure that the gap is as small as possible. I apologise if that has presented a problem for committee this year, but the team has endeavoured to get the information to you as quickly as they possibly could.

**The Convener:** The document looks as though it has been run off in a hurry. It should be presented similarly to the budget. I suggest that it should also be circulated to every MSP, since our view is that every department has a responsibility in terms of climate change. It might give the document higher status if that were so.

**Paul Wheelhouse:** I certainly agree that it is important for every MSP to consider the information—especially given the need for every committee to scrutinise the low-carbon agenda. Indeed, all ministers are held accountable for their actions, and we are collectively responsible for delivering on the Climate Change (Scotland) Act 2009. We all take an interest in it, and it is especially relevant now that the Cabinet sub-committee on climate change has been created.

I accept the convener's point entirely: we need to ensure that the carbon assessment has status and that people recognise it. We can always look at the formatting and presentation of the document, and I am happy to go away with that as an action point for next year. There is obviously a desire to ensure that information is produced as quickly as possible, which has perhaps meant that we sacrificed style in presenting the information.

**The Convener:** It seems to us that it took longer than three weeks before the assessment was available to MSPs. It was more like five weeks.

**Paul Wheelhouse:** My understanding was that it took about three weeks to prepare, but I ask John Ireland, who might be more familiar with the deadlines, to say when that happened.

**John Ireland (Scottish Government):** I am just looking for a piece of paper on which I noted down the dates yesterday. The level 4 information was available on 23 October, and the assessment was published on 11 November, which is roughly three weeks. The five-week period that you mentioned was the time that it took last year.

**The Convener:** It is probable that, although the level 4 information comes about a fortnight after the budget, the actual document came two or three weeks after that.

**John Ireland:** Yes. There is the difference between the level 4 information and the information in the document that is before you today: the level 4 information is produced and then we collate the information and provide the commentary on it, and we produce it as quickly as possible. You can get a sense of the timing issues if you look in detail at some of the items that are still not tied down at level 4. We are trying to make a trade-off between getting a useful commentary to the committee on the level 4 information as it is presented, which takes time, and publishing information that is as full as possible.

The timing also accounts for the formatting. We produce the document using Word, rather than sending it to the printers to be laid out properly, which would add another delay. We understand the committee's frustrations, but we are trying to do it as quickly as possible. The convener is absolutely right to say that we should in the future circulate the assessment to all MSPs, but there is a trade-off required if we are to take the time to do the work and assemble the commentary. It cannot be done in seconds; it takes time.

**Paul Wheelhouse:** It might be worth mentioning—the committee may be aware of this—that we are developing a macroeconomic model for the purposes of the third report on proposals and policies. I am not sure whether John Ireland and his team have had a chance to think through whether that will speed up the process next year, but we can always look to see in future years whether availability of that model will allow us to calculate more quickly from the level 4 figures in order to produce the assessment more rapidly. We will always try to shorten that gap.

I am aware of Parliament's need to scrutinise the figures as soon as possible, but there are physical limitations on what we can do now. I am confident that the team has done everything that it can this year to get the figures to the committee as quickly as possible, but as I said previously, we will look at the formatting and at how we distribute the figures and will do what we can to improve the process for you.

**The Convener:** Okay, thank you for that. Jim Hume has the next question.

**Jim Hume:** Thanks, convener, and good morning everybody.

Scotland missed the annual climate change targets in 2010, 2011 and 2012. How does the minister account for that within the rural affairs and environment budget? What action has been taken in the budget to address future climate change targets?

**Paul Wheelhouse:** On behalf of the Government—and, indeed, the Parliament—I put on record our disappointment that we in Scotland have missed our targets. I have dealt with the issue in a ministerial statement. If we want encouragement, the actual amount of greenhouse gases that we emitted has been below the target—so better than the target—for the past two years. Sadly, that was not the case in 2010, when we were off the mark. In 2011 and 2012, the amount of greenhouse gases that we emitted was below the targets that we set ourselves as a Parliament, but we recognise that, based on the net account, we failed.



Your second question was on what we are doing to tackle that. We have done a number of things. We have engaged with our stakeholders—as, I believe, have the Opposition parties—which include WWF, Stop Climate Chaos Scotland and Friends of the Earth, to look at the options for addressing our country's underperformance. A package of measures was brought forward in June to try to address the requests that have been made. John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth, has met stakeholders again to hear their concerns and to look at what measures could be taken in future years to get us back on track to achieve the tonnage targets that we have set ourselves, which mean that we probably need to achieve a reduction of just over 46 per cent by 2020. We recognise that the task is getting harder, although the baseline adjustments obviously played a huge part in the perceived—and actual, in terms of the statutory targets—missing of the targets.

As I said in response to the previous question, we are committed to developing a macroeconomic model that will allow us to understand much better the cost-effectiveness of Government spend in all areas on tackling low carbon. I hope that the model will be available in the late summer of next year for use in the autumn of next year to inform RPP3. It will also have a benefit in informing future budget rounds, so that we can advise colleagues in different portfolios how much carbon abatement they get for every £1 million that they spend on certain types of activity. Therefore, we will be in a much better position to examine our performance and to consider what steps are necessary to get us on stream.

Ute Collier gave the committee some examples in a previous evidence session of what it would take to save a megatonne, but that is not necessarily true. She referred to spending £5 billion in housing, but we might be able to save a megatonne elsewhere in the economy for a lower cost, so we need to have an understanding of what we can do.

I give the committee a commitment that we are looking seriously at how we can achieve the absolute tonnage targets that have been set in the annual statutory targets. Through the Cabinet sub-committee, we are working together as a team to identify how we can do that across Government, bearing in mind that we do not have sectoral targets—if we fail in one area, we need to make up the shortfall somewhere else in the economy and we are working as a team to do that.

**Jim Hume:** Thanks for your answers, minister.

The figures in the draft budget indicate that rural enterprise looks to be being cut by 98.9 per cent, so it is almost completely done away with altogether. Various projects that I am aware of

come out of that budget, such as the monitor farms project. One of the monitor farms has focused on climate change and carbon use, so it would be concerning if the budget for that went. There is also the Go Rural scheme, which our deputy convener helped to launch, and the rural leadership programme, which I recall that Jim Mather said was a vital attribute that will play a key role in achieving the rural business growth that we all want. It is really quite concerning that the rural enterprise budget seems to be getting chucked out the window. Will the minister comment on that and on where the projects might go in the future?

**The Convener:** That is more a question for Mr Lochhead than for this minister.

**Paul Wheelhouse:** I am happy to give an overview.

**Jim Hume:** The monitor farm project relates to climate change and carbon use.

**Paul Wheelhouse:** I am happy to address the question, although I think that the cabinet secretary could deal with the detail.

On the overall position that we have arrived at, it is worth stating that a number of stakeholders, including NFU Scotland—with which I believe Mr Hume may be familiar—were demanding that we had almost no transfer of funds from pillar 1 to pillar 2. Had they had their way, we would have had nothing in the agri-environment budget and nothing in the enterprise budget.

We have to be realistic, because we received a very poor settlement in both pillar 1 and pillar 2. I do not necessarily want to revisit the entire debate that we experienced over the summer but, as I think you know, we had a very poor level of funding for pillar 1 and little scope to transfer funding from pillar 1 to pillar 2. The pillar 2 settlement is the lowest in Europe—we have €12 per hectare, which is by any standard a meagre settlement—therefore we have very limited ability to fund agri-environment and other measures.

In the negotiations, the farming community for land managers wanted minimal transfer of funds from pillar 1 to pillar 2 and the environmental non-governmental organisations wanted to maximise the spend on agri-environment measures. The cabinet secretary faced a difficult challenge, but he tried to strike that balance, so that the maximum modulation has gone into pillar 2 aspects that cover agri-environment measures, which is what the stakeholders were asking for, and the farmers have effectively got what they wanted with minimal transfer through modulation to pillar 2 in relation to the other aspects of the SRDP. That is the position. Effectively, it is what stakeholders asked for. Neither group got exactly what they wanted, which is probably a good thing. The agri-environment budget is maintained—it is actually

£10 million higher, but I appreciate that that is in cash terms not in real terms. We are also able to support the agri-environment projects that the environmental NGOs believed it was vital to support.

In a nutshell, we have arrived where we are because we have a very poor settlement on pillar 1 and pillar 2 and there was limited scope for modulation. The cabinet secretary has done the best that he can to achieve a balance of what the various stakeholders were asking for.

**Claudia Beamish (South Scotland) (Lab):** Good morning to you and your officials, minister. I want to take you back to question 1. You raised the issue of the new macroeconomic model, which I very much welcome, as I think it will be helpful. However, I am not clear how it will help with drilling down to level 4 figures during the budget process. I do not understand how it would speed that up. Can you clarify that for me? It would be helpful to understand the relationship between the two things.

**Paul Wheelhouse:** To be clear, I did not say definitively that it will help. However, I am keen to consider whether we can use that model, given its ability to tell us about the cost-effectiveness of spend and its impact through the supply chain—if we put money into a particular area, what impact does it have on achieving our overall purpose of sustainable economic growth and what does it do for the low-carbon supply chain and developing the low-carbon economy? If we can use that additional modelling capability within Government to help to inform the budget process, it may well enable us to respond faster with a change in level 4 figures. At the last minute, we might be able to tweak the figures and come forward with a better assessment.

John Ireland is the expert on this issue and the model is very much his baby. We could see whether the model might give us additional functionality that we can use to speed up the process next year. I do not know whether he wants to comment on whether that is even feasible, given that I am bouncing it on him in the course of a committee meeting. However, it is a possibility that is worth exploring.

10:00

**John Ireland (Scottish Government):** It would not necessarily add to the speed of the process but I think that it would add to the utility. It could provide additional information, so we will look at that. The other area in which it could help enormously is with some of the issues around the carbon assessment of the budget, which is very helpful in terms of the carbon content of Government expenditure but is less helpful in

terms of abatement potential—in fact, it says nothing about abatement potential.

I think that the new model will give us a lot of scope to provide the committee with additional information. We would need to think about the timing and sequencing of that. It might be more sensible to focus first on a commentary that we can provide quickly and then provide additional information later, because model runs take time. I think that what the minister is signalling is that there is scope to do a great deal of stuff that would be helpful for the committee's scrutiny process. Once we have the model up and running, we should come back to that and also pick up on the concerns about timing and getting information to the committee as quickly as possible.

**Claudia Beamish:** Thank you.

**The Convener:** Nigel Don has another question on targets.

**Nigel Don (Angus North and Mearns) (SNP):** Good morning to you, minister, and your colleagues. I want to pursue this issue a bit further because models are, of course, always welcome but they are only as good as the original data and, indeed, the algorithms that people put into them. I am conscious, as the minister will be, that the portfolio that we are talking about is one of the highest producers of carbon for the money that we spend. I think that we probably understand that, but you might want to give some explanation of that, minister. In that context, should we put more effort into auditing? I ask that not because I want Government auditors running around the place but because I think that those who receive very substantial sums of money in our communities should perhaps be required to provide some kind of professional carbon audit for their businesses. Quite a large amount of carbon and of public money is involved.

**Paul Wheelhouse:** Those are very reasonable points about the balance of expenditure. Looking forward quite a long time, we anticipate that by 2050 a very much larger proportion of Scotland's total remaining emissions will be in the rural land use sector. So, all the organisations involved in that sector will have an interest in ensuring that they are carbon efficient—I am not sure whether that is a legitimate term.

**Nigel Don:** It will do. We know what you mean.

**Paul Wheelhouse:** It will do for the purposes of this conversation, I hope. Everybody would have that particular interest and, regardless of whether it was mandatory or voluntary, I would have thought that everybody would have an incentive to ensure that we try to maintain livestock production in Scotland, for example, in the face of the requirement to reduce our carbon emissions. It is in the sector's interest to work with Government

and stakeholders to deliver agriculture that can maintain productivity in a lower-carbon future.

I have previously given a response to the committee on our thoughts about where we might go on carbon audits in the farming sector. I entirely agree with Nigel Don that it would be a sensible area for us to have a dialogue with the industry about to see what, ideally, can be done voluntarily. We obviously have the farming for a better climate farms, which are trying to demonstrate to the sector what is possible. They do that through peer-to-peer influence to show that a good farmer, taking what we hope are relatively easily replicable steps, can deliver a 10 or 11 per cent improvement in their bottom line. That is a good thing to do as a business and it also has the benefit of lowering its carbon intensity.

We are trying different tactics to encourage people, but there is a lot of carrot rather than a lot of stick. Obviously, we need to work with the industry to come forward with as unbureaucratic a means as we can of recording information to allow us to understand what is happening and to monitor it through time to understand whether we are on the right trajectory in terms of the emissions profile of the agriculture sector and other rural sectors.

I entirely agree with Nigel Don that that is a good thing to do. Ultimately, if performance is less than expected, we might have to go down more of a stick route, with mandatory measures. However, at this stage, I am hopeful that we will not have to consider that.

**Nigel Don:** I share your enthusiasm for those measures being carried out. Frankly, however, I do not share your optimism that it will happen. My observation of the world is that people do not change until you force them to. The opportunity to act voluntarily provides time to develop the methods, which would be useful. History suggests, however, that there must quickly come a point when people are just told, "You're going to have to do this." Otherwise, uptake will be too slow.

**Paul Wheelhouse:** I agree with Nigel Don that there is a risk that people will not follow through. We have indicated, in relation to the announcement in June on the common agricultural policy package on permanent grassland and nutrient management plans, that we expect the emergence of a situation in which plans have to be produced.

We are working with the industry to develop the appropriate software and tools so that, during this period when it is not mandatory to produce plans, the process is as easy as possible for farmers to deploy. We do not want to create huge layers of bureaucracy for them, although we think that producing a plan is in their interests. That gives us time to demonstrate that those farms that are early

adopters benefit from savings on nitrogen and fertiliser costs, as well as there being a reduction in the risk of diffuse pollution breaches at the farm. There are lots of reasons for farms to engage in the process, and we hope that we can demonstrate that it is in their interests to do so. However, we have already signalled that we are probably moving towards a position where there will be a requirement to produce a plan in due course.

I accept the point that Nigel Don is making: that there is a risk that some farmers may be less forthcoming than others. Bringing in a requirement is always a backstop, and there is a willingness to do that if we have to. However, I hope that farmers will heed the need to take action themselves in the longer-term interests of the industry, so that it is as viable and competitive as it can be in a way that is consistent with the low-carbon future that we all need to achieve.

**The Convener:** Talking of sticks, we move on to planting targets and forestry.

**Paul Wheelhouse:** Neat segue, convener.

**Alex Fergusson:** Thank you, convener—I think.

If we could indeed move on to forestry, minister. Perhaps I should say "branch out" into forestry.

**Members:** Oh!

**Alex Fergusson:** I am merely following the convener's lead.

To be a little more serious, the draft budget restates the Government's intention to plant 100,000 hectares by 2022. As we have discussed many times in the committee, the target started off at 10,000 hectares a year. It then became 100,000 hectares over 10 years—which still requires an average of 10,000 hectares a year. If we can cut through all the figures, the fact is that those targets are not being met.

Given that RPP2 attributes measurable emissions abatement figures to increased forestry planting, which is an integral part of RPP2, I wonder whether the minister can speculate or comment on the impact of continually failing to reach the targets that we need to reach if we are to attain the overall target of 100,000 hectares, given the climate change targets that the Government has set?

**Paul Wheelhouse:** Forestry is extremely important to achieving our targets. I recognise that in Mr Fergusson's question. I do not have a precise figure in front of me—we can come back with a correct one—but I believe that about 18 per cent of our emissions are offset by our woodlands. That is a huge sink. We are not like Latvia, however, which effectively has negative emissions annually, because its forests are so huge. That

country is in the fortunate position of not contributing to global climate change, because of the size of its forests.

We indeed have an objective to plant 100,000 hectares between 2012 and 2022, and it is true that we have not achieved a rate of 10,000 hectares in the last three figures. However, it would be wrong to ignore the fact that there has been a significant increase in investment in woodland planting over those past three years. We have worked with the private sector, the national forest estate and NGOs to ensure improved performance, but we have not achieved a rate of 10,000 hectares a year.

There are a number of reasons for that. The key factor—looking forward, rather than looking back to what has happened over the past few years, when weather and other things have kicked in—is the availability of sites. We must reach a position where we have the right number of sites and the right places being proposed for sites. There are certain restrictions on what the Forestry Commission can do. We have all signed up to the woodland expansion advisory group process, which relates to concerns about forests being planted in the wrong places and concerns from the livestock sector about the loss of grazing land to forestry in places such as the Ettrick valley, which I know that Jim Hume is familiar with. That has meant that the process is slower now. There is a challenge around finding land that is available and which, after consultation with communities and local farming interests, we can plant on.

On the balance of funding between the national forest estate and the private sector, the issue is that, largely, we need to be able to plant trees on private land, and we need to have the right incentives for private landowners to allow us to do so. I recognise that it is important to get that balance right.

There will be a transitional period for European funding. That will lead to a slight drop-off in planting in the current year, while we move to the new SRDP. We have done everything that we can to minimise that drop-off. I am thankful to the Forestry Commission staff and to stakeholders for working with us to ensure that we can get a reasonable amount of planting done in this transitional year, unlike during the previous transition, when planting dropped like a stone.

There has been some movement on planting rates, but we need to catch up between now and 2022. In the next spending review, we will consider what support there is for forestry planting, and we will take into account our underperformance on planting to date. I cannot guarantee what the outcome of that will be, but during the spending review process I will make representations on the need to raise our

investment in forestry if we are to achieve our target—that is, if I am still in this post after the weekend.

**Jim Hume:** Is that likely?

**Paul Wheelhouse:** Mr Hume may not think that it is likely, but I am an optimist.

**Alex Fergusson:** All I can say is that I am sure that your slight nervousness is shared by many colleagues, minister. We wish you well over the weekend.

**The Convener:** And beyond.

**Alex Fergusson:** Indeed.

On the implications of the missed targets for the climate change targets, if we fail to catch up—that has to be a possibility—is the Government thinking about how it can mitigate the clearly detrimental impact that not meeting the targets will have? Is there a way in which you can compensate from other areas if we continue to fail to reach the targets?

**Paul Wheelhouse:** We are looking at our portfolio in the context of the Cabinet sub-committee on climate change. Each portfolio is in effect looking at delivery to date against RPP2. Obviously, the climate change delivery board has done a warts-and-all analysis of our performance against the RPP targets. In the case of the rural affairs portfolio, woodland planting is a challenging area. It is our job to consider what we are doing and make suggestions to the Cabinet sub-committee about ways in which we can, from within our resources, make up the shortfall in emissions abatement. If we fail to plant a tree in 2012, there will be an impact around 2022, as the peak sequestration potential of a tree occurs around eight to 10 years after it is planted. We are already beginning to cause ourselves problems in the early 2020s by not matching the 10,000-hectare target in previous years.

We will consider what we can do to make up the shortfall from within our resources. We can look at what we can do in the national forest estate or on newly acquired land, but there are timelines involved there because of the WEAG process. We have a number of farms and areas of land that we have bought but not yet planted. We could make up 3,500 hectares of planting through that alone, but that could take two years to get through the system, and then there is the need to phase the work because of the capacity in our workforce.

As you can see, making up the shortfall is not the simplest matter. However, I assure you that the rural affairs portfolio will make that contribution to the Cabinet sub-committee process. If it is not possible to make up that abatement from within our portfolio, the Government will have to come up with another way of doing so, within the timescales

that we set out in RPP2. We recognise that the need to abate emissions of CO<sub>2</sub> and other greenhouse gases has not diminished. Therefore we need to make up the shortfall at some point between now and 2022, when the target was intended to have been delivered.

10:15

**Alex Fergusson:** Catching up on the planting targets that were set is obviously the best solution to the problem that we have been highlighting. At the Confor conference that you and I both attended a few months ago, you made it quite plain that much of the onus for new plantings would fall on the private sector. In evidence that we received a couple of weeks ago, Confor raised a concern that so much of the expectation seemed to be falling on the private sector. Confor's submission stated that the money available is "wholly inadequate to deliver" what is being asked of it.

I realise that that point is coming from one particular group. However, at the same meeting, Jo O'Hara agreed that meeting the targets over the next SRDP period would be "really challenging". I do not think that any of us would argue with that—this is not a criticism in any shape or form. However, can the minister respond to Confor's concern? Does he feel that the funding that is in place under the SRDP is adequate, given the concerns that have been raised—particularly by the private sector, on which there is such an expectation?

**Paul Wheelhouse:** I could be cheeky and say to Mr Farquhar from Confor that it is quite unusual to find the private sector saying that it wants Government to keep all the money and not give it to the private sector. For a number of reasons, we have a challenge in relation to stakeholders' perceptions of our funding activity in the private sector. If the Forestry Commission were to use all that funding to expand dramatically the amount of land in the national forest estate rather than planting trees elsewhere, we would run into the problems that we have encountered in the Ettrick valley with the WEAG process. There is seemingly a great degree of resistance to the Forestry Commission buying up farmland. That is one challenge.

We could have an alternative model where the state invests in increasing the amount of tree planting and increasing the number of hectares under forest cover by buying land and then funding the planting, but that model seems to be largely resisted by the private sector, particularly farmers.

We have reflected on the concerns from Confor and others about the intervention rates that are

available to support planting. I know that our position is not universally liked, but we have moved to a position where we are looking at more of a balance between the incentives for planting commercial species and those for planting native broadleaf species. That is not to take any money away from native broadleaf. Largely speaking, we have parity in funding now, so if native broadleaf species are appropriate for the scheme—it may be that a conservation outcome is being sought rather than a commercial outcome—it is clearly still going to be possible to fund that.

We have brought up the level of funding for commercial species, recognising the potential drop-off in commercial timber supplies in about 30 or 40 years, given the problem that we had in the 1990s and early 2000s with a fall-off in planting. We have recognised that there is a need to produce a consistent supply of timber for a number of uses—including for the construction sector, clearly—but without taking anything away from the need to continue to plant significant numbers of native broadleaf trees for environmental reasons.

We are trying to get the balance right with limited funds. Obviously, some stakeholders wanted us to abolish forestry planting funding in its entirety, such was the resistance to increased tree cover and loss of agricultural land. We have resisted that request. We are keeping the level of funding flat in cash terms in the budget, which I appreciate will come under pressure. That is why it is important to make the point, as I did in response to the earlier question about the forthcoming spending review, that we need to look seriously at whether the amount of resource is going to deliver the 10,000-hectare target over the long term.

I accept that there is a challenge to do with bringing forward land from the private sector quickly—Mr Farquhar was right about that. If we can get the incentives right, it will be possible.

This is a choice for Parliament and society. Do we give funding to the Forestry Commission to expand its ownership of land and expand the national forest estate on behalf of ministers, or do we work with the private sector to deliver planting?

A lot more could be done with farmers. Agroforestry is interesting, and we could work with farmers to come up with schemes that are maybe slightly bigger than the schemes in which they have been involved in the past, and which are appropriate for commercial-scale extraction. We could work with the farming industry to emulate what is done on the continent, where farmers regard forestry as a long-term equity investment, for harvest at some time in the future.

There are lots of different models that we can use, but I accept the point that there is a

challenge. The overarching point that I want to make is that it is not a simple challenge to address.

**The Convener:** Claudia Beamish has a question.

**Claudia Beamish:** Thank you, convener, but my question was about agroforestry—or silvopasture, depending on one's perspective—and the minister has highlighted the issue, for which I am grateful.

**Roderick Campbell (North East Fife) (SNP):** Minister, you touched on incentives for the private sector. In a time of financial constraint, how far can you think outside the box, to encourage production without straining the budget?

**Paul Wheelhouse:** That is an enormous challenge. You are right; we have a constrained pillar 2 budget to play with, so we are not able to invest in everything in which we would like to invest. We have heard this debate, but if we had been able to emulate Ireland and other countries we could have had an extra €2.5 billion to spend up to 2020, which would have been of enormous benefit in enabling us to find additional funding not just for forestry but for all sorts of agri-environment schemes.

We are where we are and we have to work within the budget that is available to us. There was a lot of pressure on us from some stakeholders not to spend even as much as we have done on forestry. We must recognise that forestry is an extremely important sector in the rural economy, with potential in the context of carbon sequestration and an impact on woodland birds—the early stages of planting are enormously helpful to some of our woodland bird species. Therefore, for many reasons, we resisted pressure to lower the forestry budget. However, we do not have much scope to increase the budget in the current spending review period. We need to think about our priorities for the next spending review.

The figure of an average of 10,000 hectares, to which Mr Fergusson referred, is an important target for us and we can afford only a certain amount of slippage in that regard, for obvious reasons that relate to RPP2. We must ensure that there is momentum on tree planting, and if incentives are not delivering that we will need to look afresh at the situation. I assure Mr Campbell and Mr Fergusson that the matter will feature large in my consideration of the budget in future and my contributions to Mr Swinney's deliberations.

**Jim Hume:** You talked about working with industry to look at forestry as a potential additional crop or something that people can use to heat their homes. I think that about 1 hectare is needed—on a rota system—to harvest the biomass that is needed to heat one's home.

About 50 per cent of land in the Scottish Borders is tenanted. There is a problem for tenant farmers who want to plant trees. They might be on short assured tenancies, with a 15-year lease, but it is 40 years before trees can be harvested. Have you or your officials considered the possibility of forestry being regarded as a crop, so that if tenants had to go, they might get waygo compensation for the crop's value, even if it was only halfway to maturity?

**Paul Wheelhouse:** That is an interesting area to look at. I can check with Jo O'Hara whether any work has been done on that. I have asked colleagues in the Forestry Commission to look at the wider agroforestry position that Claudia Beamish is interested in and to comment on what potential there could be there. I had a chance conversation with the James Hutton Institute about the issue; it is looking at the silvicultural position in Sweden and other countries, where that is very much the norm. Having a different land ownership model may play a part, but I have not looked at that specific aspect.

We can work with tenant farmers, NFU Scotland and Scottish Land & Estates to try to come up with some solution. I know that initiatives are being taken forward with wood lots, which a number of interests are supporting. Indeed, I believe that the first wood lot was deployed in Mr Fergusson's constituency. That might allow a different model, in which the tenant leases woodland on the landowner's estate for that reason, but I am happy to look at the idea of a tenant investing capital in forestry and then getting waygo compensation. It is a good point, and Jo O'Hara may wish to comment on whether she and her colleagues have looked at the issue already.

**Jo O'Hara (Scottish Government):** We have not started yet, although it came up when I was at the committee two weeks ago, so I have it on the list of things that we definitely need to look at. It seems to depend on the exact nature of the tenancy agreement, and that varies from one lease to another. It is something that we will look into.

**The Convener:** Is it not the case that the tenancy review group will be looking at waygo generally and that woodland will be one aspect of that?

**Paul Wheelhouse:** That is absolutely correct, convener. Even at this late stage, we can throw that into the mix as something that can be taken into consideration. I am not sure whether forestry investment has been looked at as a specific example, but we can ask whether it has been squared away in the review group's work.

**The Convener:** Last time she was before the committee, Jo O'Hara said that no applications for

planting had been refused because of a lack of money in the woodland grant budget. Are additional incentives necessary to promote new woodland planting in the private sector if the funding levels have not been a constraint?

**Paul Wheelhouse:** We need to keep an eye on whether the funding level itself is the problem. That is why we need to look at the next spending review to see whether there is an issue. If there is, we need to address it, because I am conscious that the amount of money that we have had available in recent years has stayed pretty flat in cash terms. However, as I understand it, the main barrier to achieving our targets at the moment is the availability of sites. Obviously, the two things are linked. I appreciate that incentives to bring forward land are essential.

There has also been a degree of uncertainty about CAP reform and about what would come thereafter and, generally speaking, what the package would be. I hope that we are getting through that, and we expect that the clarity that now exists about the regime will help to bring forward some projects that may have been held in abeyance while people waited to see what the future held for them.

I hope that that hiatus will work its way through, but we may still find ourselves in a position where we are not quite getting enough land coming forward to achieve our 10,000 hectares, so I certainly agree that we need to consider whether the incentives are sufficient to achieve the important targets in the longer term.

**The Convener:** I would like to continue on that thread. Thanks to a note from the Forestry Commission following our evidence session a fortnight ago, we have been reminded that the woodland expansion advisory group wanted tough guidelines about the way in which the Forestry Commission goes about buying land. First of all, it is interesting to note for the record that 55 per cent of those purchases are on the open market and 45 per cent are off market. We know exactly what has happened with the 55 per cent but, because of commercial confidentiality, we do not know why certain people have sold their land to the Forestry Commission in negotiated sales. Can you expand on that for our benefit? It seems to me that that might help our planting targets.

**Paul Wheelhouse:** I certainly recognise the phenomenon. I understand from previous conversations with Bob McIntosh, the director of the Forestry Commission, that there have been cases in which people do not want to air their issues in public but would rather find out privately whether there is the potential for a sale, as an easier route for them to dispose of their land than going through a public sale.

That is true of private house sales, which people sometimes pursue for that reason. I am not sure whether that applies to everyone who makes a private sale to the Forestry Commission. The important issue is that, once the land has been acquired, the same regulation applies to the commission in relation to what it does with that land. Even once land has been acquired, the same process has to be gone through of consulting local agricultural interests and the local communities on whether it is appropriate to plant on the land. From that point of view, the timescales are the same. The fact that land has not been acquired in a public sale does not facilitate faster planting. I might have misunderstood the point that you were making.

10:30

**The Convener:** I am going to go on to make another one. Certain farming interests have criticised the Forestry Commission for buying land in that fashion. Given that 55 per cent of the land that is acquired is purchased on the open market and 45 per cent of it is acquired in negotiated sales, it is important that we establish where the pressure points are. The fact that there is a willing seller might well be the trigger for the Forestry Commission to identify an opportunity, but it could be blamed by other parties because it has taken that opportunity to buy the land concerned.

**Paul Wheelhouse:** I acknowledge the point that you make. There might be local concerns about such transactions taking place. The Forestry Commission and Forest Enterprise Scotland are in a difficult position if someone approaches them about a private sale, because if they were to consult local stakeholders on whether they were happy with the land being bought in that way, that would breach the commercial confidentiality of the agreement.

**The Convener:** So no consultation takes place with the local community on such sales.

**Paul Wheelhouse:** Since late 2012, Forest Enterprise has written to all neighbours following a land purchase. I appreciate that that is after the sale, but it is still the position whereby, before anything is done to take forward a change in use or to plant forestry on the land, consultation takes place. We have the safeguard that if planting forestry proved to be an absolute dealbreaker for the local community, the land could be used for agriculture or sold off.

I appreciate that that might not be the answer that you wanted to hear, but at least it is the case that, since late 2012, as part of the impact of WEAG, immediate consultation takes place with stakeholders once land is purchased to ensure that they are aware of what has happened and

what the land might be used for, and they can put in their views.

**The Convener:** But it is not just communities that are affected. There are individuals who might feel that they could have used the land that the Forestry Commission has, in a sense, outbid them to purchase. It is all very well talking about communities, but there might be neighbours who feel that they could have used the land. The way in which the Forestry Commission handles such situations is an issue that we will want to explore in the future, because we need to know more about why land can be sold privately without our knowing why.

**Paul Wheelhouse:** It is worth pointing out that the Forestry Commission does not have any desire to subvert any processes that might involve the community. The commission has the challenge of looking for good sites on which to invest in forestry in the national interest. That is part of its job. Therefore, if it is finding sites that are being offered to it at a reasonable price, it would be unreasonable to suggest that it is not legitimate for it to proceed in those cases.

However, I take the point about community consultation. It is worth stating that, when FES purchases land, local community organisations become eligible to lease or purchase that land under the national forest land scheme. That does not address the point about a neighbouring farmer who wanted a bit of extra land. If the land was best kept as agricultural land, the WEAG process would reveal that. We have created a number of starter farms in recent times through that process. If there is someone who could lease the land—perhaps as an extension to their farm holding if it is not viable for use as a starter farm—they could explore that with the Forestry Commission. The commission is not in the business of farming, but it is in the business of creating opportunities for new entrants to farming.

**The Convener:** It was helpful to discuss that just now, and I am sure that we will return to the issue.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** I have a quick follow-up point on that very interesting discussion. Later this morning we will consider the Community Empowerment (Scotland) Bill and the community right to buy. It strikes me that there is a possible conflict of interest, or at least a dichotomy, regarding secret sales and how they will impact on community empowerment and the community right to buy. If communities do not know that something is being sold, they will not be able to exercise their rights. Perhaps the minister needs to think through that connection a bit more.

**Paul Wheelhouse:** My small team will probably hate me for saying this, because they could be overworked, but I would genuinely encourage communities that have an interest in land to register it, because they then get a pre-emptive right to buy the land if it comes up for sale. It would be illegal for a landowner to sell a piece of land privately, to Forestry Commission Scotland or anyone else, if a community had registered an interest in it.

It would be in the community's interests to register a piece of land that it might want, even if it was not certain that it could present a good case for why it would be in the community's interest to own the land. I invite such communities to approach us for advice on how to register an interest in land to ensure that they are not left out of the process or any consultation on the future of a site.

I take the member's point about the wider community empowerment agenda, which is very important. The Forestry Commission, Scottish Natural Heritage, the Scottish Government's rural payments and inspections directorate and other Government agencies are looking at how best we can engage in that process and facilitate community ownership projects at local level. As I said, once we have acquired land it would then be available under the national forest land scheme. If the land is surplus to our requirements, the community would have the ability, under the national forest land scheme and with our support, to bid to buy the land.

I would hope that there are some safeguards, but I am always interested in suggestions about improvements that we could make. If the committee had any recommendations about how we could demonstrate best practice in the area, I would look at them seriously.

**Dave Thompson:** Thank you, minister. I accept what you say—we will discuss the issue later, so I will not labour the point now—but it raises the question whether there should be a need to register in the first place. If there was no need to register, that would put a different complexion on the whole thing. However, I will raise that point later.

**The Convener:** We have been talking about land use strategy at a higher level, but we need to have much more detailed local land use strategies in order to anticipate potential uses for particular land, whoever owns it at present.

**Paul Wheelhouse:** I agree. The two interesting pieces of work that we are doing on regional land use framework pilots in Aberdeenshire and the Scottish Borders are not intended to be the be-all and end-all. They are an exploratory exercise to understand how we can use grass-roots feedback



for the land use planning process and how that ties in with local authorities' development planning processes. We want to identify the communities' aspirations for how the land in their areas can be used and have that reflected in local authorities' development planning documentation. Obviously, that would then have an influence on projects that come forward and would ensure that opportunities that communities had identified were not missed, which they might have been in the past because of a top-down process for determining how land should be used.

I recognise that the grass-roots element is an important innovation and I hope that we will learn enough from the two pilots to come up with a model of involving communities in the land use process that can be rolled out across the country.

**The Convener:** When will we hear the results of the pilots?

**Paul Wheelhouse:** Maybe it is old age, but I forget our timescales; I will come back to the committee on that following this meeting.

**The Convener:** Aye, being a minister leads to feelings of old age.

**Paul Wheelhouse:** Sometimes it does.

**The Convener:** We move on from community health to tree health.

**Angus MacDonald (Falkirk East) (SNP):** Good morning, minister. Over the past couple of years, we have had serious tree health issues in Scotland, not least ash dieback and *Phytophthora ramorum*, to name but two. In evidence to the committee on the draft budget, RSPB Scotland highlighted the importance of the Forestry Commission's monitoring and research work with regard to tree health. However, it also stated that

"the scale of these programmes needs to be enhanced."

Other evidence stressed the importance of work on tree and plant health. Nigel Miller, the out-going president of NFUS, told the committee:

"Another basic issue is plant health and research, for which there is a flat budget. We seem to be facing a minor crisis as far as tree diseases go."—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 5 November 2014; c 42.]

Can you explain the full provision for tree health in the budget and reassure the committee and stakeholders that it will be sufficient to meet future challenges with regard to tree and plant diseases?

**Paul Wheelhouse:** Thank you for that question. I will bring in Jo O'Hara on the detail of what we are spending in this area. I recognise Mr MacDonald's point and the point that stakeholders made in previous weeks that tree health is an area of growing importance. The fact that we are encountering a bigger problem with tree diseases

and pests than we have done in the past is obviously linked to climate change in some respects. It is a growing area of concern for us.

I visited Dumfries and Galloway and saw the horrendous damage caused by *Phytophthora ramorum* in the Galloway forest area, not only to the national forest estate assets but to the wider private sector-owned forests in Galloway. I am sure that Mr Fergusson, Mr Hume and Claudia Beamish will recognise that when people visit the region in the height of summer and see brown larch trees everywhere that have been killed very quickly by *Phytophthora ramorum*, it is immediately obvious that we have a real challenge. Add to that *Dothistroma*, or pine needle blight, and *Chalara*, or ash dieback, which you mentioned, and it is clear that we face a number of threats at the moment.

We have tried to increase the budget for plant and tree health. I will be honest and say that it is not as much as I would like to see invested in this area, but we are constrained in our budget at this time. I certainly want to reassure the committee that I recognise that this is an area of growing concern. Where I can, I will look to put additional resource into it.

We have an important relationship with Forest Research, which is currently funded largely by DEFRA, and we work closely with it. In the event of a different result in September, there might have been a different conclusion about the future funding of the likes of Forest Research. Some of the funded activity that is dealing with plant and tree health does not show up in our accounts because it is funded from elsewhere on our behalf. We recognise the scale of the challenge and the need to put resource in. I hand over to Jo O'Hara to talk about the detail of what is being spent.

**Jo O'Hara:** As the minister said, DEFRA spends money on our behalf. I think that we are currently talking in the range of around £2.5 million for the whole issue of forest resilience and tree health within the research budget, but that is in the process of being worked up at the moment. There is also the money in the rural and environment science and analytical services division strategic research programme, which is also in the process of being worked up as it is a five-year programme. This subject comes under a number of other headings.

With regard to the Forestry Commission heading, we have £3 million of additional funding next year specifically highlighted for tree health. Of that, £1 million is with Forest Enterprise Scotland. It is primarily going on roading to get at the diseased larch in Galloway and the additional restocking. We have been working to harvest additional larch when it has been diseased so that

we do not get all the inoculum spreading further from the outbreak in 2012.

When the new SRDP opens in March, £0.5 million will be in there to fund the private sector for replanting cleared infected sites. We have identified another £0.5 million that we will supplement that with for a similar scheme. That is not included in SRDP European Union funding; it is purely Scottish Government funding coming from the Forestry Commission budget.

On top of that, another £1.5 million is going on surveillance; we do extensive helicopter surveillance each year to see whether the disease has spread. This year, as a result of that, we noticed that luckily there was not the big expansion that had taken place in the previous year. We are in the process of recruiting three new staff to support folk in the field in the north and in the south. Some of the money is going on improved diagnostics, so that when the public see a diseased tree or have diseased trees on their land, we can work out whether it is *Phytophthora*. Is that the right level of detail for you?

10:45

**Paul Wheelhouse:** Convener, you—or, indeed, the official report—may not have caught all that. We can supply the detail in a supplementary letter, if that would be helpful.

**The Convener:** That would be very helpful. Can you give us a total for the various areas?

**Paul Wheelhouse:** I am afraid that I would have to rely on Jo O'Hara for that.

**The Convener:** We are trying to establish what is in our budget and what is other additional money.

**Jo O'Hara:** I can give you only the Forestry Commission figures. There is £3 million within our budget and £0.5 million within the SRDP funding for next year that is additional funding.

**Paul Wheelhouse:** If it would be helpful, convener, we can pull together the totality of what is happening, including funding that is outwith the Scottish Government's purview—such as DEFRA funding for forest research—so that you have a comprehensive picture of what is being spent on tree health.

**The Convener:** That would be helpful.

**Roderick Campbell:** In oral evidence to the committee on 5 November, Ms O'Hara referred to the role of large local nurseries and said that there were stricter plant controls and enforcement. Where does that feature in the budget?

**Jo O'Hara:** I do not have the exact figure, but that featured in the budget for the previous two

years, when we funded a transition plan for nurseries so that they could introduce better phytosanitary conditions in the bed, to try to reduce the contamination of trees in the bed before they were taken out to the nursery.

We have worked very closely with nursery representatives through the tree health advisory group. We have done a lot of on-the-ground advisory support and diagnostic work with them. On identifying additional grant funding for such work, I can come back to the committee on how much we have spent on getting nurseries to a position whereby they will be more resilient in dealing with plant health outbreaks when they occur. I do not have a ring-fenced budget for that.

**Paul Wheelhouse:** Mr Campbell may not be aware that, under current conventions, we do not fund the recovery of losses on the part of nurseries. That explains why the actions that we have taken are about the sanitary aspects, if you like, of operations at the nurseries rather than about dealing with the cost of stock that is lost through disease outbreaks. An historic convention applies across the whole of the UK with regard to the actions that we take to support nurseries. We do that by improving their performance and their sanitary procedures rather than by dealing with the cost of losses.

**Jim Hume:** Not all the stock that is planted in Scotland comes from Scotland or even the UK. It can come from very large nurseries elsewhere, hence diseases are making jumps of several hundred miles. Is any work being done in the budget or elsewhere on having smaller or more localised nurseries so that diseases do not make such large jumps?

**Paul Wheelhouse:** I agree that that is a known risk that may have played a part in some disease outbreaks. Scientific officers who work for DEFRA have done work on behalf of all the UK Administrations that indicates that, in the case of Chalara, there may have been climatic or at least weather-related sources of the spread of the disease, but the situation was not helped when diseased material was perhaps brought in from elsewhere. Once the disease was in the UK, it was migrated around the UK by the planting of infected products from nurseries at other sites. That has been a dominant feature of the migration of the disease within the UK.

There is a challenge in that regard. We are working with DEFRA to tighten up the regulations on products that are imported to the UK, and we have had some success. I am grateful to DEFRA colleagues for taking on board our concern about pine products, which are particularly important to Scotland; additional measures have been taken to restrict imports in relation to pine and other conifer products. That is an example of work to try to

eliminate potential vectors of disease in an important part of our forest estate in Scotland.

We think that the pine tree lappet moth did not come in naturally but was imported to the UK at some point. We have to be careful about beetles, larvae, moths and other invertebrates that come to the UK on products and then spread to our forests.

It is partly about money, and we can give detail of what we are spending in the area; it is also about regulation, which can play an important part in avoiding future costs. You will be aware of the whole agenda around non-native species, which is an area that we have to consider.

**The Convener:** We move on from planting trees to removing them. What contribution will the funding of £10 million for peatland restoration schemes in 2015-16 make towards achieving the emission reductions that are set out in RPP2?

**Paul Wheelhouse:** It is an important start. In RPP2 terms the expectation for investment is about £230 million between 2013 and 2027—I emphasise that RPP2 refers to whole-economy costs. The £5 million that we are spending in the current year and the £10 million for next year are an important start in the process.

It is important to recognise that the £10 million for next year is being delivered through the SRDP. We hope that it will attract and lever in private sector and third sector money, which will supplement the funding, so that we get peatland restoration projects that are worth more than £10 million in 2015-16.

Neil Ritchie might give more detail. We have made good progress as a result of the initial investment of £5 million, and more than 100 sites have been identified for investment. We are confident that we can deliver on the £5 million in this financial year.

The challenge is for next year. The issues are similar to those to do with bringing forward sites for forestry that we have just been talking about, given the scale and number of sites that are needed if we are to deliver projects worth £10 million-plus, as I hope that we will do. I hope that the development of Scotland's national peatland plan and peatland code will bring in additional partners.

The most high-profile site is Forsinard, in the convener's constituency. That is a partnership between RSPB and a private landowner, with Government support. We need a cocktail of partners to work together to find a landscape-scale solution and secure the quality of projects that we are looking for.

**Neil Ritchie (Scottish Government):** I do not think that I can add much to what the minister said or to what Alan Hampson, from Scottish Natural

Heritage, said to the committee last week, about the £15 million in the spending review. SNH is making good progress in allocating the money and getting uptake and it looks likely that we will exceed the 6,000 hectare target that we set.

One of the biggest lessons that I take from our experience of allocating money over the past year is that it is about not just money but capacity building and providing awareness of approaches to and tools for restoration, as well as an understanding of the benefits. It is also about supporting innovative approaches such as the peatland code, which is aimed at developing a corporate social responsibility market. That will take time to develop, but the work is coming together and we are making progress that will stand us in good stead.

Next year we are retaining about £500,000 of the £10 million to support SNH's work on promoting peatland restoration in the context of the SRDP and wider resources, as well as helping to maintain the capacity building approach, on which we have good feedback from key stakeholders.

**The Convener:** I am sure that we could have a detailed discussion about that at some point. However, on this budget, you have provided a little bit of information about how the budget that is allocated to peatlands will be spent. Can you give us a bit more detail on that?

**Paul Wheelhouse:** We will happily come back to the committee with a fuller exposition of what is being done and the approach that is being taken to deliver the initial £5 million. I hope that that will give the committee confidence that good work has been done, as Neil Ritchie indicated. I refer you to what Alan Hampson told the committee about roughly 6,000 hectares of peatland being restored. I will verify that figure and get back to you so that you can be confident that it is accurate.

**The Convener:** Can you reassure the committee that the initiative will achieve the optimum results in terms of greenhouse gas emissions and multiple other benefits?

**Paul Wheelhouse:** I can give you a commitment that we are trying to ensure that that is exactly what happens. From the point of view of inventory, we still do not have an accurate picture of what factors we can apply to peatland investment in terms of the impact on our abatement activities. We are working to develop as specific a set of figures as we can, which will fully reflect what we believe to be the genuinely positive impact of peatland investment. The figures that are available currently are too generic and they undersell the peatland investment and its impact on climate change. We are working on that element as part of the development of the

greenhouse gas inventory, so we can get as accurate a figure as possible. Once we have got that, we will know exactly how effective our spend is.

The message that I give to the committee is that we are optimising the use of the money that is available to us at the moment. Obviously, we will learn from the initial tranche of projects what works and what does not, and we would hope to ensure that it is an iterative process and that we learn as we go along and further enhance the effectiveness of the spend as we develop our approach.

Once we have the inventory figures, we will be able to make better informed investment in peatland and ensure that we get the best bang for our buck.

**The Convener:** I am sure that you will bear in mind the deep peat in places such as Forsinard and also the raised bogs in the lowlands, because the RSPB has highlighted the importance of ongoing maintenance of peatland that is in a reasonable condition. Is the work on peatland maintenance quantifiable? Is it likely to fall foul of active management requirements in the SRDP?

**Paul Wheelhouse:** I am aware of the active management concerns. We can come back to that point when we have considered the detail. However, we believe that we can work around the issue. In some cases, peatland can be well maintained by a low level of grazing. I have certainly seen that on the RSPB reserve at Loch Leven, in Fife, where low-intensity grazing by cattle and sheep keeps the condition of the wetland in good order.

We need to consider the balance, and we need to avoid creating a situation in which the CAP active management regulations have unintended consequences. We are aware of the issue and will come back to the committee with a more considered response.

**The Convener:** That issue is quite important in relation to our thoughts about the budget's effectiveness, so it would be useful to have that information soon.

We move on to equalities issues, including age.

**Claudia Beamish:** For the record, I highlight the fact that there is a statutory obligation on us all to consider supporting the groups of people with protected characteristics. The committee deliberated on the matter and has decided that, without excluding other groups, we will consider the issue of age this time.

Last week, we received some interesting evidence from the forest policy group, and I will read from it so as to remind us all. There is a particular emphasis here on young people—but

not exclusively. The forest policy group's submission said:

"FPG supports the idea of Forestry Commission providing opportunities for new entrants to farming but encourages the Forestry Commission to develop parallel ideas on how to extend the tenure and management of forests to sectors of society who have effectively been excluded from involvement in forestry in the past. The focus for encouraging new entrants to forestry should not be solely on communities (though this is important), but should also include people of ordinary means, especially those living in rural areas. FPG considers that this is sufficiently important to warrant featuring in the aims of the budget alongside the mention of new entrants to farming."

I wonder whether you could comment on that, minister. How might that be taken forward?

11:00

**Paul Wheelhouse:** I certainly recognise the point. I referred earlier to wood lots, which represent just one potential measure that has been developed by the industry, working with landowners, for exploring how to get new entrants into forestry. We are working in parallel fields to get new entrants into crofting, too—not just farming. It is important that we work hard to encourage new entrants into all areas of rural land use.

There are opportunities for communities in forestry, as Claudia Beamish has said. That point has been well discussed, and the means by which communities can take over and manage forest assets are relatively transparent. Those means offer communities the opportunity to provide solutions themselves for getting new entrants into forestry locally. However, I take the point that there is perhaps more work that could be done by the Forestry Commission as regards bringing in new entrants.

There are opportunities for communities to lease forests but not necessarily for individuals to do so. I am sympathetic to points that have been made previously, including by woodland crofts organisations, about how we can create new woodland crofts. That is another way of entering forestry.

Unfortunately, there has not been an opportunity so far but, in relation to the repositioning programme and the disposal of sites, my officials will be aware that I have explored on a few occasions whether it would be possible to create some sites for woodland crofts in the process—or whether we can create them when we are acquiring forest.

I will give an undertaking to Claudia Beamish and to the committee on that subject, which I take a keen interest in. As I say, the opportunities have not yet arisen, but I continue to look for opportunities for creating more woodland crofts.

We had a productive discussion with representatives of the Scottish Woodlot Association, when there was a members' business debate, about what the association could do along with the Forestry Commission. I know that the Scottish Woodlot Association wishes to work more closely with the commission to see whether there are wood lot opportunities on the national forest estate. We can come back to the committee on that matter with a considered view.

I do not know to what extent work has already been done on the matter that since that meeting. Perhaps Jo O'Hara can comment on whether anything has been taken forward. I am keen to explore the matter.

**Jo O'Hara:** As I mentioned to the committee last time I was here, we are working closely with the Scottish Woodlot Association. We have provided funding and advice, and we are working with the association to take the project further, as I think Claudia Beamish is aware.

**Paul Wheelhouse:** I am struggling to find information on this in front of me, but we have done a lot of work on the matter. We have brought through and developed the skills of about 95 apprentices and trainees. Those individuals may develop further skills and may therefore provide a future source through which people could take on the management of assets themselves, rather than doing so through the Forestry Commission.

We have an important role to play in the industry in helping to train the workforce of the future—people with the appropriate skills to manage forests, as individuals or as communities. That is another important dimension of the work that we do under the rural affairs portfolio, specifically through the Forestry Commission in this case.

**Claudia Beamish:** Bearing in mind the fact that that work is all about leasing—unless I am wrong—are there any opportunities for supporting the purchase of forest land from the Forestry Commission that relate to young and new entrants? If not, could that be considered?

**Paul Wheelhouse:** I am happy to look at the issue. I am not aware of an equivalent to the new entrant schemes for new farmers, for example, to provide grant funding for people to set up their own woodland operation. We can look at what scope there is within existing support mechanisms for that to be facilitated. Claudia Beamish makes an interesting point. I am not aware of anything myself, but perhaps Jo O'Hara can add anything I have missed regarding grant schemes that would support the idea that she has raised.

**Jo O'Hara:** The important thing about starter farms is that they are for tenant farmers, who use them to get themselves set up so that they can get

some form of payment going forward. That probably relates to the tenancy role.

The other thing that I remind the committee of is the lotting of sales. When we put land up for sale, Forest Enterprise identifies much smaller pieces within it to market. Rather than marketing a large piece of land as one, we break it up so that a wider range of people might be able to bid.

**Paul Wheelhouse:** I am conscious of a couple of high-profile instances that happened recently.

We looked at all sorts of opportunities for Roseisle forest. Because of the quality of the asset and the lack of infrastructure in the site, it was deemed that it would not lend itself to lotting into small areas. We specifically looked at creating little crofts there, and we thought that it might be neat to redress history's damage to that community, if you like, by trying to bring people back to work in the countryside in the area. However, it was deemed to be the wrong opportunity for that due to the lack of infrastructure for small croft operations within a very large landholding.

Encouraging new entrants is something that we can look at, and lotting is another way of doing it, as Jo O'Hara has said. Whether the lots are the right size is an issue. I appreciate that, as it takes some capital to invest in a forestry operation, another question will be whether people have the capital.

I give a commitment to Claudia Beamish to have a look at what we could do on that front and whether it is possible to come up with a scheme similar to farming entrant schemes, recognising that a very long-term investment is required in forestry as opposed to farming, which is more immediate in terms of its impact.

**The Convener:** It should be said that capacity building is even more of an issue in whether a community can take on such things in places with so few people. The issue relates to the area that Roseisle is in. The north coast is clearly an area that needs to have capacity built in order to have the confidence to take on such things.

**Paul Wheelhouse:** Absolutely. I recognise that, and I am aware that in the Roseisle forest area the community is struggling to maintain even a retained fire service because of the age structure of the population. That was why we explored the opportunities to create smaller units and get some population in there to work the forest. However, it just did not happen in that case.

**Cara Hilton (Dunfermline) (Lab):** Good morning, minister. Looking at the equality statement that was published alongside the draft budget, I would like to ask what the improved data shows with regard to the use of the outdoors and

green space, and how organisations such as Scottish Natural Heritage will take the data into account when making their spending plans.

**Paul Wheelhouse:** Those are important issues. When I visit projects that either we, SNH or the Forestry Commission have invested in, I am conscious of how much additional work is going into making them accessible to all ages and all abilities. That is a very important part of what we are trying to do. It is an ethos that carries through the woods in and around towns initiative as well; the purpose of that project is to create opportunities for people, regardless of their abilities and age, to access the countryside and to get the benefits for both physical and mental health and wellbeing of using those assets.

SNH has certainly been improving the range and the quality of data that is available to us in that area. The latest survey included questions on frequency of use and ease of access to Scotland's outdoors as well as satisfaction with the green space being used and the impact of green space on mental health.

The data indicates that 46 per cent of adults made one or more visits to the outdoors per week in 2013, compared with 42 per cent in 2012. It may be that the year of natural Scotland boosted the 2013 figures, and I hope that the investment in the year of natural Scotland had some impact there. The challenge is to maintain that increased level of activity in future years; I recognise that. Those figures compare with 44 per cent in 2006, which shows that the level goes up and down over time.

At the same time, we know that a quarter of the population never goes outdoors in the sense that we would regard as going outdoors and that participation is lower in certain social and economic groups. Poor health is the second most common reason for not participating. If people have physical capability issues, that is obviously a major limiting factor in their accessing the outdoors. That is why it is so important that we do the work that we do as best we can of putting in level paths and smooth surfaces so that people can use wheelchairs, Zimmer frames and other mobility devices to get around.

Increasing the participation of people in those groups is of course relevant across several Government departments and is not just a rural affairs issue. We have played our part in the health inequalities working group in trying to bring forward what we can do in terms of "green prescriptions", as Harry Burns called them. He was very much of the mind that they were more effective than pharmacological prescriptions in many cases, particularly for stress-related conditions and mental health conditions. That challenge is also recognised in the 2020

biodiversity strategy as something that we need to do more on.

I hope that that answer gives a flavour at least of where we are at on the issue. We recognise that we need to keep doing more on it, particularly to help people who have physical infirmities and age-related conditions that prevent them from accessing the countryside.

**The Convener:** Rod Campbell has a question arising from the equality statement.

**Roderick Campbell:** Minister, can you update us on where we are with domestic climate justice, how much it has impacted on the budget and what the future holds for the issue?

**Paul Wheelhouse:** Up to now, the climate justice agenda has largely focused on international climate justice efforts, but we have been looking increasingly at what we can do on the domestic front. For example, I commissioned research on the exposure of individuals to flood risk, looking particularly at the relationship between income and other inequalities and flood risk. That has been identified as a particular challenge for a number of communities across Scotland. Methodological issues have meant that there have been some changes in our assumptions about where such communities would be, and we are constantly reviewing that.

We have invested in the Crichton campus in Dumfries, and we are looking at establishing research excellence there that can be networked across Scotland. Taking advantage of the capabilities that we have across the country will enable us to focus more on how we can channel research to look at issues such as how Scotland adapts to climate change and deals with flood risk. We are working with groups and projects such as ClimateXChange, and we have centres of excellence in, for example, Dundee, Stirling and the University of Edinburgh.

Therefore, we are putting more effort into research on the issue, with the long-term objective of it informing our policy in areas such as flood risk management and wider climate change adaptation issues that go well beyond just flooding.

**Roderick Campbell:** Thank you.

**The Convener:** There are no further questions. I thank the minister and his team of officials for a good set of evidence. We look forward to responding to it in our remarks to the Finance Committee on the budget, which we will make as comprehensive as possible with the help of the supplementary evidence that the minister will provide.

11:13

*Meeting suspended.*

11:19

*On resuming—*

## **Community Empowerment (Scotland) Bill: Stage 1**

**The Convener:** Under agenda item 5, the committee will take evidence on the Community Empowerment (Scotland) Bill from the bill team. We welcome Dave Thomson, who is head of the land reform policy team, Ian Turner, who is community empowerment team leader, and Rachel Rayner, who is a Scottish Government lawyer. I refer members to the relevant papers.

I will kick off with a question. Land reform is a specific policy area, many aspects of which sit outside the public sector reform agenda, so is the bill team satisfied that the dialogue and consultation with stakeholders on community right to buy and crofting community right to buy has been timely, sufficient and proportionate?

**Dave Thomson (Scottish Government):** I think that Ian Turner would be best placed to comment on the consultation process, having been involved with the bill team as a whole.

**Ian Turner (Scottish Government):** As regards consultation on the bill and community right to buy as it was originally set out, an exploratory consultation was held in 2012. A paper was produced and the minister and officials went on a series of visits, conferences and road shows, which were done in collaboration with the Convention of Scottish Local Authorities and involved a range of people and organisations. The consultation was not just on the community right to buy—it was on community empowerment as a whole, in which the community right to buy was included. We received 447 responses and the analysis was published in 2013.

Following that, a second more specific consultation was done in late 2013 on the topics for inclusion in the bill. Those included improvements to the community right to buy process, extension of the right to all Scotland and the potential to include provisions on abandoned or neglected land. Again, a series of meetings and events were held throughout that consultation, and 424 responses were received overall. An independent analysis was commissioned and was published on 12 June 2014. The majority of the responses in that consultation were in favour of the community right to buy elements being taken forward in legislation. We got to the introduction of the bill at that stage.

We gave evidence to the Local Government and Regeneration Committee in September and we

provided further details to the clerk in a letter to that committee following our evidence session. I am not sure whether this committee has seen that letter; I am more than happy to provide a copy of it, as well, if you would like more details.

**The Convener:** That would be very helpful. The draft bill did not contain any sections on the community right to buy, which we are discussing in respect of part 4 now.

**Ian Turner:** The consultation included questions on the community right to buy. The draft bill did not have that element.

**The Convener:** When you said that a majority were in favour, what size was the majority and what sort of detail is there?

**Ian Turner:** Ninety-three per cent of responses were in favour of extending the community right to buy to all Scotland and 83 per cent agreed that there should be a right to acquire land without a willing seller. There was a set of questions about improvements. The majority were in favour of all the improvements to the bill.

**The Convener:** Was it a large majority?

**Ian Turner:** The majority varied, depending on the question, but there was a large majority for most of them.

**The Convener:** In that case, because it sits more generally in the land reform agenda, why are the part 4 provisions not being included in land reform legislation?

**Dave Thomson:** In the initial phase, there was a commitment to include the changes in the then proposed community empowerment bill. The changes were included because there is a very clear connection between community empowerment and the right to buy. Various studies have provided examples of where it works. It was included in the bill largely because, over the 10 years of using what were parts 3 and 2 of the Land Reform (Scotland) Act 2003, various areas that need improvement had been highlighted and it was felt that it would be better to take action to improve those now, while we have this chance, than to wait until some potential future chance arrived. The community right to buy fits in very nicely with community empowerment as a whole, as a theme.

**The Convener:** Okay. That is fine for a start.

**Alex Fergusson:** I have a wee supplementary on one specific aspect that Mr Turner mentioned: the percentage of respondents who said that they approved of the community right to buy without a willing seller. Did that refer to the terms and conditions that are detailed in the bill, or was it just a general statement?

**Ian Turner:** It was a general statement in response to a question rather than to specific provisions.

**Alex Fergusson:** Right. So because there was no detail—

**Ian Turner:** There was no draft bill at that point, so the answer was just in those terms.

**Alex Fergusson:** The respondents were not aware of the provisions.

**Ian Turner:** No.

**Alex Fergusson:** That question was answered not in relation to the bill, but purely as a general question.

**Ian Turner:** Yes, that is correct.

**Alex Fergusson:** I just wanted that to be clarified.

Our job is to scrutinise part 4 of the bill effectively. Last June, the convener of the Local Government and Regeneration Committee wrote to the minister in fairly critical terms about the policy memorandum, stating that it was

“little more than a superficial overview.”

Some more detail has since been provided.

On part 4, the policy memorandum contains only three pages in which a large amount of detail is précised in just seven bullet points. Do you feel that enough information has now been provided to explain fully the bill’s purpose and intentions in order to allow us properly to scrutinise part 4?

**Dave Thomson:** The short answer is yes.

**Alex Fergusson:** I thought that you might say that.

**Dave Thomson:** Given the additional information that has come through the Finance Committee, the Delegated Powers and Law Reform Committee and the Local Government and Regeneration Committee, and through continued engagement with stakeholders, we have expanded on what was originally in the policy memorandum to allow this committee to undertake a high level of scrutiny.

**Alex Fergusson:** How do you strike a balance between encouraging public dialogue and participation—which has been a buzzword lately—by making the information simple enough for people to engage with, and providing enough detail to make the intentions clear?

**Dave Thomson:** Along with the policy memorandum, the bill team produced an easy-read guide.

**Ian Turner:** We produced an easy-read guide that works alongside the policy memorandum and covers all parts of the bill. It has been broadly

welcomed by stakeholders as representing, alongside the accompanying documents, an easy way into the bill.

**Jim Hume:** The financial memorandum states that

“there is a large degree of uncertainty on the level of costs”.

What is anticipated as the largest potential cost area for communities and landowners? Why does the financial memorandum not provide a range of potential costs in different areas?

**Dave Thomson:** The overall gist is that the bill as a whole will introduce a much wider range of options for communities. As Derek Mackay told the Finance Committee, the fact that there is such a wide range—the options are not endless, but they are numerous—makes it very hard to say that there will be X instances of one type of community action and Y instances of another type.

On the specific right-to-buy element, we have included an estimate for the additional number of cases that we think will come through. It is only an estimate—it suggests that there will be five to 10 cases a year. The costs of those cases will obviously vary depending on what the community is wishing to purchase. We have based the costs for that particular part of the bill on the previous year’s experience of cases coming through. For example, there is a range of costs for a ballot of between £1,000 and £5,000, but the actual cost would vary depending on how many people were balloted.

Through adding up all the elements, which are all just ranges, it is hard to put a cost on the provisions. Ian Turner may be able to go into more detail on the process for the bill as a whole.

**Ian Turner:** That is right. Part 4 contains a demand-driven element, much like the participation requests in part 3 and the asset transfer element in part 5. There is a right for communities, but it depends on what they want to do and how they want to proceed, and which assets they want to acquire in that way.

Local circumstances will dictate how far the legislation will be used. The extension into the urban arena will no doubt lead to a rise in the number of right-to-buy cases, but we do not know what the rise might be, or what the common features might be with regard to asset transfer, which involves acquiring public assets in that way.

The financial memorandum tries to put a unit cost on the various elements, and those costs will apply in each case, but we will not know an overall cost because of the demand-driven elements.



11:30

**Jim Hume:** Obviously, we are always concerned about the unintended consequences of any legislation. What funding schemes are available to help communities with that work? Do you think that an increase in applications may have the unintended consequence of eating into another budget, if there is one?

**Dave Thomson:** There are a number of funding openings for community bodies through the likes of Highlands and Islands Enterprise, Community Land Scotland and the Scottish land fund. A commitment to extend the land fund was made at the Community Land Scotland conference this year. We are actively looking at how and to what extent that might be done. Obviously, the community right to buy's move into the urban situation brings various funding streams that were not available through the community right to buy's being rural only. There are various options out there, so we are ensuring that, as we actively monitor demand and the types of requests that are coming through, we tailor the funding to suit them.

It is not just about funding; there is also support for and advice to communities to ensure that they take the right options in the first place. It is not necessarily about ownership; other options will be available through the bill. Support and funding for them are actively being looked at, and they will continue to be monitored.

**Jim Hume:** Okay.

I want to consider the costs for public bodies. Obviously, there will be some resource issues for them. Do you have a good estimate of what potential costs there could be for public bodies? What support might there be if demand exceeds expectations?

**Dave Thomson:** That issue was raised through the Finance Committee, as well. We do not have clear estimates because we do not know what demand will be or what types of action communities will take. For the same reason, we cannot estimate what additional resource will be required from local authorities. Ian Turner will correct me if I am wrong, but they could not estimate that in their submissions, either, if I remember rightly.

**Ian Turner:** No. The local authorities generally could not provide individual figures, which was part of the difficulty in costing the bill as a whole. COSLA has said that individual elements of the bill will not be overly onerous for local authorities.

**Jim Hume:** Section 72 says that local authorities

"must take reasonable steps to ensure that the number of persons entered in the list"

for allotments is provided for. Have there been any thoughts on going a little bit further and putting a limit on the time that local authorities have in which to provide an allotment? I believe that, currently, it can take up to three years to get an allotment and that the Scottish Allotments and Gardens Society is interested in making it a duty that the maximum wait be three years.

**Dave Thomson:** I am afraid that the allotments part of the bill is not particularly my strong point. Ian Turner may be able to give some detail on that.

**The Convener:** To be fair, I say that it is the Local Government and Regeneration Committee that is looking at that.

**Ian Turner:** Yes. Allotments are in part 7 of the bill. We will get back to you properly in writing to ensure that we get the answer right.

**The Convener:** Okay. Thank you. We will move on to the delegated powers memorandum.

**Cara Hilton:** Good morning. The Delegated Powers and Law Reform Committee has raised concerns that proposed new section 97C(3)(a) of the 2003 act, which is on eligible abandoned or neglected land, is very vague in respect of how the power will be used. It also said that the Government's explanation was

"inadequate in light of the significance of this power and what it appears to permit."

I would be interested to hear more about what the thinking behind that power is and, in particular, examples that demonstrate how the power might be used in practice and how ministers intend to use it.

**Dave Thomson:** The range of powers in that proposed new section is quite wide. We are still actively discussing them with stakeholders to ensure that we cover all the nuances. I am sure that everybody can come up with ideas on what should or should not be included at certain points; views will differ and more will emerge as we go on. At the moment, we are ensuring that we can cover such areas as much as possible.

Rachel Rayner is better placed than I am to comment on what specific powers cover in a legal sense.

**Rachel Rayner (Scottish Government):** Proposed new section 97C(3)(a), which the bill will insert into the Land Reform (Scotland) Act 2003, states that land on which there is a building that is someone's home is not eligible land, and there is a power to make exceptions to that. Whether there is a need for that is a question that is being actively considered; it is the power about which there was most concern.

Other powers concerning eligible land will be set out in regulations pertaining to land that is someone's home. That could include private gardens or outbuildings, and we have some examples of how we intend to use that power, but whether it is still appropriate to take the power in section 97C(3)(a) is still under active consideration.

**The Convener:** When will we get more detail about that? I sense that you are saying that we might well get more detail, since the matter is under discussion.

**Rachel Rayner:** The Government needs to respond to the Delegated Powers and Law Reform Committee's report at the beginning of December.

**The Convener:** We will bear that in mind.

**Claudia Beamish:** Ian Turner has already touched briefly on the nature of the land in which an interest may be registered. At present, as I understand it, the right-to-buy provisions in part 2 of the 2003 act apply only to community bodies that represent rural areas that have a population of less than 10,000. Section 27 of the bill will amend the definition of registrable land and the power of Scottish ministers to define excluded land, which has been mentioned in relation to housing, but there may be other categories as well, so the community right to buy would now apply across Scotland.

I would like to explore further with the bill team how community confidence, cohesion and sustainability will be affected by extending the community right to buy, and what evidence demonstrates that. Although the 2013 consultation demonstrated widespread support, as has been highlighted, for extension of the community right to buy, what evidence is there that the new right to buy will be used? That is a neutral question.

**Dave Thomson:** I will hand over to Ian Turner to comment on what emerged during the consultation process. In general, submissions on the bill that have been sent to the Government or through the likes of the land reform review group give us the overwhelming feeling that the power is exactly the kind of thing that communities would like in order to—to use a buzzword—empower themselves. Essentially, it will give them the right to decide what they want to do with their future and the means to effect that. Ian Turner will be able to comment more specifically on what was found during the consultation.

**Ian Turner:** It is a difficult question to answer with evidence, because it depends on what communities themselves want to do with the power. Community empowerment as a whole is about devolving as much power as possible to communities so that they can take the decisions that they want to take. However they want to do it,

we want to ensure that it is for them, and not for authorities or other people, to set their agenda. In general, the community right to buy in the 2003 act has been seen as a success for rural Scotland, so it could also be a success for the rest of Scotland. During the consultation and discussion with stakeholders, it felt as if people see it very much in that way. As for actual evidence of whether that will happen, we will see that in practice only when the legislation is in use.

**Claudia Beamish:** I have two brief supplementary questions. First, are there any practical problems with extending the community right to buy to urban areas? For example, how will ministers differentiate between conflicting applications for the same piece of land or building?

**Dave Thomson:** The more obvious practical issues are that there will be more people in an urban situation than there might be in a rural one, so more people will need to be balloted, and there is more likely to be more than one owner in a block of offices or whatever. Practical difficulties such as that may occur, but they are recognised and they are by no means insurmountable.

The bill allows for duplicate applications to be dealt with, essentially by putting the two applications that come in side by side, comparing them and seeing which will produce the better public interest and, at the same time, benefit the community. Such overlap may well occur more often in urban areas than it would in rural areas, simply because there are allotment societies, toddler groups, local councils, village councils and whatever else. We cannot say for sure that it will happen, but the bill allows for it to be dealt with through side-by-side consideration of the two applications.

**Rachel Rayner:** I can add a little more detail. In new part 3A of the 2003 act, on the right to buy neglected and abandoned land, new section 97K sets out what will happen where two bodies have applied to buy the same land. It requires ministers not to decide on one application until they have considered all the views that they have had on both. They then have to make a decision and tell both bodies what they have decided. As Dave Thomson said, the process is reflected in the bill.

**Claudia Beamish:** That clarification is helpful. Thank you.

My other question is about the time within which community bodies must re-register. The land reform review group suggests in its written evidence that re-registration be required every 10 years rather than every five years. Do you have any comments on adopting that longer timeframe? Are there any other ways in which we might make

re-registration of land less onerous, bearing in mind that we are talking about community groups?

**Dave Thomson:** We are certainly taking steps to make the re-registration process less onerous, which might involve simplifying the form somewhat. On the timescale, however, we feel that five years is about the right length of time for us to take account of any changes in what the community needs and how it wants to take things forward. Ten years might be too long, as there might be too many changes. If we were sticking with what the community agreed 10 years ago, we would need to ask whether the position was the same 10 years on.

We feel that the five-year timescale is adequate, but we are still taking stakeholder opinions on that. Some say that it should be five years, some that it should be 10 years and some that it should be less. We are considering it, but at the moment we are sticking with the five-year timescale.

**Claudia Beamish:** So it is still under consideration.

**Dave Thomson:** Yes.

**Claudia Beamish:** Thank you.

**The Convener:** It seems appropriate for us to move on to questions on the meaning of “community”. Angus MacDonald will lead on that.

**Angus MacDonald:** Good morning, panel. We know from our briefing that section 34 of the 2003 act provides that the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. The 2003 act also provides for the use of postcode units in order to define the community that a community body can represent. Section 28 of the bill allows for Scottish charitable incorporated organisations—or SCIOs—to be included, stipulating that they must have no fewer than 20 members.

What are the practical implications of the extension to include SCIOs? What other types of bodies might ministers specify by regulation?

11:45

**Dave Thomson:** First and foremost among the practical implications of the extension to SCIOs is that community bodies will be given flexibility in how they wish to go about the business of setting themselves up. There are considerations in relation to the protection of individuals on a community body in ensuring that assets are dealt with appropriately should that body be dissolved, for example.

We have sought the opinion of stakeholders on the additional bodies that could be included. Those that have been suggested include bencoms—community benefit societies—and

community interest companies. We are considering what other bodies could be included but, as you said, there are provisions that allow bodies to be added. If there is a strong desire for specific bodies to be added, we can look at that again. Apart from SCIOs, bencoms are the other main type of organisation that has been put forward for consideration.

**Angus MacDonald:** Is the use of postcode units too general or too restrictive a way of defining a community, particularly in light of the proposed extension of the community right to buy to urban Scotland?

**Dave Thomson:** That is certainly the opinion that we have been hearing. We propose to allow other options, such as settlements or locations as defined by the General Register Office for Scotland. We are talking about not a more general term but an alternative to identifying all the postcodes. For example, a village is a location or settlement. The same is true of urban areas—parts of the city of Glasgow are settlements or locations in their own right and can be identified in that way.

Essentially, the idea is to give communities some flexibility in how they define themselves. There is provision in the 2003 act for a community to use some other means, but a community must let us know what means it is using and why, and that will have to receive ministerial approval.

In relation to the requirement that a body must have a minimum of 20 members, there is provision, in particular circumstances, to have a smaller number of members, but the body would have to explain why that was the case. That is probably more relevant to a rural body than it is to an urban one.

**Rachel Rayner:** Those changes will be made to section 34 of the 2003 act. As Dave Thomson said, ministers will have more flexibility to make regulations that prescribe a type of area. The fact that that does not have to be done by postcode will provide more flexibility. However, it will still be done by area.

**Angus MacDonald:** I want to explore the definition of “community” a bit further. Are there other methods by which a community might be defined? I am thinking of arts organisations, for example. An arts organisation in my constituency is a keen supporter of the bill. Charities and ethnic groups are other examples of communities of interest. I think that you have already mentioned allotment societies, and I would be interested to hear your view on the inclusion of community councils or common grazings committees, which might have some abandoned land nearby.

**Dave Thomson:** Rachel Rayner is probably better placed to answer on what is and what is not allowed.

**Rachel Rayner:** At the moment, new part 3A of the 2003 act just provides for a community body to be a company limited by guarantee. It is always an option for an existing group to form a specific company. As Dave Thomson said, we are considering what other bodies could be added. As has been mentioned, there is a power for ministers to make regulations that set out other bodies, should that be considered appropriate. In addition, that power allows ministers to set out the requirements that a body needs to meet to ensure that it is an appropriate community body to own land.

**Dave Thomson:** At this stage, the definition is still based on a geographic community, rather than a community of interest.

**Angus MacDonald:** Should the definition that is acceptable to ministers be in the bill?

**Dave Thomson:** Do you mean a definition of “community” in general?

**Angus MacDonald:** Yes, and the specific organisations that would be acceptable.

**Dave Thomson:** Some element of that would be acceptable in the bill, but it would depend on how many organisations would be listed, because the length of the list could be significant. If ministers were minded to do that, it might be more relevant to list the acceptable characteristics. We are not considering doing that at this point, but as more and more bodies are added to the list the issue might come back.

**Rachel Rayner:** Flexibility is useful. A few years ago, SCIOs did not exist. We need flexibility to deal with changes and types of entity that will exist in future.

**The Convener:** I know of communities that have attempted to buy land and found several chapters in the approach that required them to change their constitutions to meet the funding criteria. Can that be addressed in this context? Have you taken the issue into account?

**Dave Thomson:** The terms that a community body must meet are largely dictated by the type of entity under which it chooses to function. For example, a company limited by guarantee will have a different set of regulations from a SCIO or a community benefit company—or bencom. Equally, different funders will have different requirements that must be met if funding from them is to be obtained. I do not think that that is something that we can try to cover across the board in the bill.

We are changing one element in relation to the rules on the memorandum and articles of association, for bodies that are not actively involved in an application. Currently, if a body changes its articles of association during the period between approval of registration and the point at which the right to buy under part 2 of the 2003 act is triggered—during which period, in essence, registration is there but not active—it has to inform the minister, and we have to approve every change. We are removing that element. There is therefore some movement to allow bodies to change their articles of association in that period, as long as they are not actively taking forward an application.

**The Convener:** It would be interesting to know whether the time that it takes to purchase land has increased significantly because community bodies have been required to change their constitutions by the bodies from which they have sought funding. I can think of at least three changes in constitutions in a 10-year period, in Evanton in Ross-shire, where I live.

**Dave Thomson:** I can certainly find out about specific cases. You mentioned three, so if you pass them on, that would be great. I can take that forward.

**The Convener:** It would be handy if you knew of some, too.

**Dave Thomson:** I do not, off the top of my head. I will ask the community right to buy team for examples that they have. They have been dealing with the issue day in and day out for the past 10 years, so if there are examples they will know about them.

**The Convener:** Okay. We move on to late applications.

**Dave Thompson:** I want to pick up on two or three points. First, will the panel explain what the reasoning is behind the requirement to register in the first place? Would it not simplify things a great deal if communities did not have to register early and could just get involved when they became aware that land was available, which often happens quite late in the process? Why do we need a registration process at all?

**Dave Thomson:** The main thrust is to do with interference in the land market and the individual's right to sell land. There are European convention on human rights considerations in that regard.

Rachel Rayner might know exactly where the rights and obligations lie in terms of the ability to pause or freeze the process of selling land and at what stage that is appropriate and balanced.

The application allows us to consider whether the community has a valid—for want of a better word—plan, so that the registration is not simply

being used as a blocking measure, for example. If the application is valid, it will proceed. It is, in essence, a way for us to gauge whether the registration is not just a knee-jerk reaction but a viable prospect.

**Dave Thompson:** There is lots of land all over the place—hundreds and thousands of hectares of buildings and land—and communities will often think that a particular piece of land will never come on to the market because it has not done so for 500 years and there seems to be no likelihood of it coming on to the market in the next 500 years. There might be some obvious examples of a community being able to anticipate a bit of land or property coming on to the market, but there must be numerous situations in which communities would have no legal reason to believe that that would happen. Therefore, why would a community spend a great deal of time putting together a registration and planning what it would do with the land if, in 99 per cent of the cases, there is no real chance of that land coming on to the market?

You mentioned blocking. People could block with a pre-emptive registration just as easily as they could with a reactive, knee-jerk registration. That is not a strong argument. I want to tease out why we need early registration. Why not allow communities to register an interest once they see that land has come on to the market? That might spark in their minds the thought, “Oh my goodness, we never thought that that bit of land would be available but we could really do something with it now. Let’s get our application in.”

**Dave Thomson:** It is a fair point. The main thing is the balance between, on one hand, the community’s aspirations and what it can do with the land—which, as you say, might only appear when it realises that the land is available—and, on the other, interference in the owner’s right to try to sell the land.

We have made changes to the late applications process to assist communities that might have done preparatory work in the lead-up to submitting an application. At the moment, the process is relevant only if work on an application was begun before the land went on sale. The change is that the community will be able to show relevant work—for example, it might have identified a need for land but not exactly which land, or it might have sounded out funders on whether there is potential in an application. Some element of work will still be required, but it is right that the focus will move away from having started the application process to having started relevant work.

**Ian Turner:** Yes.

**Dave Thomson:** We are expanding it slightly, but there is a point at which we have to balance

the owner’s right to sell the land and the community’s aspirations to obtain it.

Rachel, are you any better placed to comment?

**Rachel Rayner:** No, I do not have anything to add.

**Dave Thompson:** That neatly moves us on. I hope that ministers and you will think about whether the bill could be simplified by taking out the need to register early but, if it is felt that there is good reason for it, it is needed and it should stay there, we can talk about that later on.

You mentioned the need for a community to show that it has done earlier work—that

“such relevant work as Ministers consider reasonable”

has been carried out—before it makes a late application. You propose to remove the good-reasons test, which is in the current legislation.

It strikes me that it might be awful onerous to show that you have carried out

“such relevant work as Ministers consider reasonable”.

How has the good-reasons test been used in the past, and why do you feel that we need to change things and move to what looks like a more onerous test that might prevent communities from being able to buy land?

12:00

**Dave Thomson:** Our intention is certainly not to make things more onerous; in fact, it is exactly the opposite. It might be that in guidance and further regulations we can clarify our exact intention, but the idea is not by any manner or means to make things more onerous.

On why we are moving away from the good-reasons test, I point out that it has been used in quite a few applications—off the top of my head, I think that a third or 50 per cent of applications are late ones—and we certainly recognise that the system needs to be more reactive in its application. After all, although the community might not have actively started the application process, it might have undertaken relevant work that would lead up to that stage, and that is something that we can take into consideration. However, that does not address the kind of light-bulb moment that you have referred to, and we are still talking to stakeholders about what they feel on that issue.

**Dave Thompson:** I do not know how the good-reasons test has been applied up to now, but surely one of those good reasons might be that the community just did not know and had no reason to expect that a particular property was going to come on the market. Having to show that you have actually done some work on something

that you had never expected to happen will basically be impossible.

**Dave Thomson:** If it would be helpful, I could provide examples of cases involving late applications that were either accepted or rejected. That might clarify our thinking behind our approach to the good-reasons test.

**Dave Thompson:** That would be helpful, but the general principle of the effect of such a move is important.

The section in question also refers to identifying the owner of the land in question. That, again, might be impossible in certain circumstances, because there could be all sorts of ways in which an owner might not be identifiable. It makes me wonder whether we need earlier registration at all, and it strikes me that, compared with, for example, the provisions that have been in place for some time now for crofting communities, things will be made more difficult for communities.

**Dave Thomson:** That is certainly not our intention. With regard to the crofting community right to buy, we are actively talking to stakeholders; in fact, we will be in Inverness tomorrow and in Harris and Skye next Monday and Tuesday talking to particular stakeholders about the changes that they feel could or should be made to that element of the bill. The good-reason and relevant work provisions will be developed and refined as the bill progresses and as we talk more and more to stakeholders about difficulties, issues and, indeed, opportunities that can be taken.

**Dave Thompson:** Finally on the issue of late applications, is the timescale for communities complying sufficient for them to be able to put together a coherent and reasonable bid for land if, up until then, they have done only the absolute minimum of the relevant work—whatever that means—that is required under the act?

**Dave Thomson:** Obviously we think so, but we can look to change that as we monitor how the provisions are used; indeed, we are already extending the valuation period from six to eight weeks. Even now, we are monitoring whether the time periods in the bill are sufficient.

We think that we have allowed enough time based on the previous 10 years' experience of what communities can and do do, but we will monitor that as we go. At the moment we think that it is sufficient.

**The Convener:** Cara Hilton has a supplementary question on that point, and then we will go to Claudia Beamish.

**Cara Hilton:** What would happen to an application to register or buy land if, despite its best efforts, a local community could not find the

landowner? Would that kill off the application, or might there be a way of allowing it to proceed if the community could show that it has taken all reasonable steps to identify the owner?

**Rachel Rayner:** A community would need to identify the owner so that their views could be taken into account and to ensure that the land could be transferred. There are other ways of trying to find owners. I do not know whether the team has come across that problem in practice.

**Dave Thomson:** I do not recall any specific examples of not finding the owner at all, but I can double-check that.

**Cara Hilton:** It would be interesting if you could check that. The ownership of some areas of land in my area is in dispute so it would be helpful to have that feedback.

**The Convener:** That would indeed be helpful. We do not know who owns some large areas of land—even some of the largest landholdings in Scotland—so the question of ownership is pretty important.

Claudia Beamish wanted to ask a supplementary earlier but I forgot.

**Claudia Beamish:** I want to go back to the definitions of community bodies that can apply. Have you looked at groups that come under the Equality Act 2010? For instance, have you looked at ethnic minority groups who have a wider geographical spread? Has there been any discussion of that sort of issue?

**Dave Thomson:** In general terms, yes. What I call interest groups or communities of interest have certainly come up in discussion. At the moment, however, we still require a geographic element in the definition of a community.

**Claudia Beamish:** I am aware that it has been an issue for other things such as the climate challenge fund.

**Dave Thomson:** Yes.

**The Convener:** We will move on to talk about abandoned or neglected land.

**Nigel Don:** I would like to start with those words “abandoned or neglected”. As I understand it, those terms are not defined in the bill. Presumably they have some kind of legal usage or possibly even a definition. Could you clarify that and confirm why it is appropriate not to define them in the bill?

**Dave Thomson:** Although the approach is to be finalised, we have two things to consider when deciding whether to use “abandoned” or “neglected”. It is whether the land has been cared for and what the effect of that care or lack thereof has had on the land's condition. That is the issue

in the broadest terms. We want to make sure that we get that right and that we do not include or exclude completely inappropriate areas of land.

It might be better to give you some examples of what we think might be covered. Let us take the example of someone who owns land on an island, which has a slipway that has deteriorated to the point at which it cannot be used. If the landowner is not willing or able to address that issue but the community can—either because it has the resources or volunteers to do so or because it has access to a different funding stream—it should be allowed the right to do that. If it means buying and developing the area that includes the slipway, so be it.

Another example might be an open area of land that is overgrown and full of broken glass. These might be extreme examples, but I just want to give the committee an idea of where we are going. Such land is a blight on the communities that surround or are adjacent to it. If all it needs is the grass cut, the glass cleared up and some improvements made, and the owner is not willing or able to do so while the community has made the case that it can make that land into something much more sustainable, we think that it should be able to do so.

We are aware that some circumstances should not be considered to be neglect. There is the case of biodiversity, for example: just because something is not actively being done to a piece of land, that does not necessarily mean that it is abandoned or neglected. There are reasons for not cutting grass or not seeding particular areas. Equally, we are not asking conservation heritage sites to rebuild a ruined castle all of a sudden because the castle is abandoned or neglected. It is a heritage building and it should be kept in an appropriate state. We also need to look carefully at land being held or assembled for future development, for example.

There are various nuances in the definition; that is why we are taking time to make sure that we get all the representations and get it right as much as possible.

**Nigel Don:** Thank you—that confirms that there is an issue here. It suggests that there is a definition to come but it is not there yet. Is that a fair interpretation? Otherwise, the lawyers are going to have some fun with this.

**Dave Thomson:** Rachel, do you want to comment, as a lawyer?

**Rachel Rayner:** The words have a meaning. The issue is more, as Dave Thomson said, that we are considering whether any refinement would be appropriate or whether what is in the bill is sufficient.

**Nigel Don:** There is a lawyer to my right—Rod Campbell—who I suspect will come in shortly. My position is that, if I were a member of a community group, I would need to have a working definition. Mr Thomson has just told me about a set of very understandable policy considerations, but I do not need to tell you—other than wanting to put it on the record—that we do not do law by making up policy; we do law by writing it down and knowing what it means.

My concern is that the courts will ultimately interpret the words on the page, not the words that you as officials or ministers or I as a parliamentarian might actually want. I am looking for some insight into how we are going to deal with the issue because I am not immediately convinced that what is down on the page is necessarily what we want. I think that, playing back what you have said, you may not feel that it is what we want either.

**Dave Thomson:** I agree that the definition should be on the face of the bill. I think that matters that the minister would have to consider in deciding whether that definition applies will be followed up within regulation rather than in the bill, but you are right that the definition should be in the bill itself. We are still actively considering exactly what the definition should be, to ensure that we get it right.

**Roderick Campbell:** I take it from that that it is a work in progress. I have just one small point of clarification: what is your view on whether the words “wholly or mainly” apply simply to abandoned land or also to neglected land?

**Rachel Rayner:** They apply to both. It is land that is wholly or mainly neglected or land that is wholly or mainly abandoned.

**Roderick Campbell:** I can see that some lawyers might argue the contrary. That is why clarity on the point would be helpful.

**Nigel Don:** Absolutely fabulous. Of course, why should we not make sure that it is plain and obvious on the face of the bill? That is where we are.

I will push on with a few more questions. On the topic of eligible land, proposed new section 97C(3)(e) of the 2003 act states that an exception to eligible land is

“land which is owned or occupied by the Crown”.

Why is that? It is an obvious exception and we normally do it, but why?

**Rachel Rayner:** The exception does not cover all Crown land; the provision notes that it is only the land that is “bona vacantia” or—I will not try to pronounce the other Latin phrase, as I will get it wrong. It is a very specific type of Crown land: it is

land that has fallen to the Crown because there is not a known owner. Not all Crown land is excluded.

**Nigel Don:** Again, if I have understood correctly—I also do not want to go into the Latin—either it is land that is of unknown provenance or we have no idea who should own it, due to failure of succession, so it falls to the Crown. I still come back to the question: why can the community not buy it?

**Rachel Rayner:** There are alternative ways of dealing with land that falls to the Crown, so that issue does not need to be included in the bill.

12:15

**Nigel Don:** In that case, I will push on.

One of the areas of interest is that a community might do exactly what Mr Thomson alluded to earlier, which is to take over an area of land and do nothing with it, apart from cleaning it up. In other words, as far as the community is concerned development might simply be conservation and keeping an area in a natural state. Is that sustainable development? It does not sound like development to me.

**Dave Thomson:** I suppose that it would depend on the state of the land beforehand. However, there is a balance to be struck. What we are not trying to do is compare uses, as in “My use is better than your use.” The issue is the sustainable development of the land.

The World Commission on Environment and Development defined sustainable development as

“development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

That seems to summarise it. Land that is just sitting there but is, for example, overgrown or concreted over and has broken glass on it is not meeting the needs of the present. Those needs could be met if, for example, the grass was cut, some benches with a lick of new paint appeared or a nice path to walk on was provided. There is also a health and wellbeing aspect to a community having a nice space that is no longer a blight.

**Nigel Don:** Forgive me, but can I stop you there? I can credit putting in a path or a bench being regarded as development, even though it might be minute. However, a community could decide that it wanted, in effect, wild land—I do not want to define that—so a space could be cleared up but nothing more would be done to it and any paths would be made only by people walking through. Would that be sustainable development? I suspect that in the context of what we are trying to do it ought to be, but I am not sure that the words in the bill have that meaning.

**Dave Thomson:** Probably the best answer is that it could be. It would have to be decided on a case-by-case basis. I do not know what the legal or dictionary definition of “sustainable development” would be, but to my mind it means an improvement, even if it is not sustainable. That might not cover particular cases—I do not know.

**Nigel Don:** I suggest to Rachel Rayner that policy is one thing but that the challenge legally is that the bill has validity only if sustainable development has a clear meaning.

**Rachel Rayner:** The sustainable development of land was considered in the Pairc case with regard to the crofting community right to buy, and the court was confident that sustainable development had a clear meaning.

You gave the example of a community only building a path or putting a bench on a piece of land. The community right to buy being compatible with

“furthering the achievement of sustainable development”

in relation to land is only one test, because it also has to be in the public interest. There are a number of tests that have to be satisfied. It is not the case that showing just that what will be done with land will “further ... sustainable development” will be enough to get a group over the threshold so that ownership of the land is transferred; there are additional tests that have to be satisfied.

**Nigel Don:** Yes, there are. Okay, I need to—

**The Convener:** Can we come back to that point in a minute, as Dave Thompson has a supplementary question?

**Nigel Don:** Of course.

**Dave Thompson:** The Pairc decision is very interesting because the community was told initially that it was not complying with sustainable development requirements for the crofting right to buy, but eventually the minister said that it was doing so. There was a list of reasons why the minister agreed that that was the case, including that

“there was a credible sustainable plan ... new activities ... potential to diversify”

and

“power to negotiate”.

Following the Pairc case, therefore, there is a model of what constitutes sustainable development, which is a very good guide for us as we move forward.

Having mentioned the crofting right to buy, I want to pick up on the reasons why we need changes. With that right to buy, only two tests apply: it must further the achievement of sustainable development and it must be in the



public interest. The bill states that another test is that the land must be

“wholly or mainly abandoned or neglected.”

Another test is added on as well. It has to be shown that,

“if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land.”

Therefore, not only must the land be “wholly or mainly abandoned”—and we have had all the discussion about that definition—communities have to show that the current owner would not improve the land. It strikes me that those additional tests, which do not apply to the crofting right to buy, are very onerous and might make it almost impossible for communities to buy.

My worry is that, if this bill goes through in its current form, it could affect the crofting right to buy. I am not a lawyer, but it would be reasonable for folk to say that, if in order to comply with the European convention on human rights we need to put in the bill two tests on top of those that are in the crofting right to buy legislation, maybe the crofting right to buy legislation is not sound in ECHR terms and those same tests need to be added to it. That is my worry if we go down this road. It seems to me to be way over the top.

Rachel Rayner mentioned the Pairc case. The Government won that case; it challenged the decision in court on the basis of the two simple tests that the purchase of the land must further the achievement of sustainable development and must be in the public interest. I fail to see why we have to make the hurdles so high and add in extra tests for the general community right to buy. I worry that, if we do that, it will be an acceptance that we did not really win the Pairc case and that we might need to revisit the crofting legislation. I have a number of concerns around that.

**Rachel Rayner:** We are content that the crofting community right to buy works and that the current test is appropriate. As you pointed out, the court has upheld that.

Proposed new part 3A of the 2003 act, on neglected and abandoned land, is about deciding the appropriate test for the problem that you are seeking to address. In part 3A, the concern is that neglected and abandoned land can in certain cases be a blight or a problem. It is about deciding what the appropriate mechanism is and when it is appropriate for ministers to decide that that land should be sold without the consent of the owner. It is about making each of the rights to buy fit for purpose for the particular issues that they are dealing with.

I do not think that the test in new part 3A will have any crossover to the crofting community right to buy. The tests for that legislation are thought to be sufficiently robust for that issue.

**Dave Thompson:** I am glad that we have that reassurance. However, will the panel comment on the ownership test, which it seems to me would be very difficult to apply in practice? Communities would have to prove that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with the sustainable development of the land. How would they do that? It seems bizarre and almost unprovable.

**Dave Thomson:** I will give you an example of what that element of the bill is trying to address.

If the owner currently has a plan in place or on track for a piece of land—a plan that may have been made only recently—and they are waiting for funding, the approval of a planning application or whatever when the community application comes in, that element allows the owner to say, “This is what I’m trying to do with the land and here is the proof of that.” It is about saying that the land cannot be taken out of their hands just because there is a delay in planning or funding.

Of course, everything is relative. If the plan was put in place five minutes before the community application came in, it would be considered as part of the application; if the plan was put in place five years ago and it could be shown that planning permission was being sought but had continually been blocked, that would show that the owner was trying to develop the land sustainably.

It is a matter of allowing the owner to put the case that they have been trying to do something with the land or that they are planning to do something with it, as long as they are not just paying lip service to that and can provide sufficient proof that that has been taking place.

**Nigel Don:** Forgive me, Mr Thomson, but I think that I understood the opposite of what you intended. It seems to me that a landlord putting in an application for something that he is never going to get planning permission for is a wonderful way of securing the land and ensuring that it is never bought out by the community. A landlord applying to do something else for which he will not get planning permission could be part of the very process of not allowing sustainable development.

I wonder what on earth the proposed new section 97C is doing. I still do not think that I have heard a reason why it is there. I understand the logic of why it might be there, but I have not heard a practical reason why you would want it there. The reason that you have just given actually works against the intention.

**Dave Thomson:** It is not intended to do so. I suppose that it is a case of looking at the plan and its viability. I hope that it would be obvious if, as you say, a landlord put in a planning application for something that was never going to work, and the issue would then be whether that planning application was put in five minutes before the community application came in.

It is a matter of deciding whether the ownership by the current owner is “inconsistent with” sustainable development. As you say, the fact that a planning application has gone in for something that will never happen does not point to the sustainable development of the land. Proposed new section 97C allows us the time to consider that, as much as anything else.

**Nigel Don:** I seriously suggest that you might like to reflect on what the proposed new section is really trying to achieve. I could take you to the middle of my constituency and show you the land that is involved in the longest-standing planning application in Aberdeenshire Council’s history. It is a large area of land that the owners reasonably want to develop in a way that would probably prevent the local communities from doing anything—it is not an unreasonable planning application. I think that the provision is going to give us problems.

**Dave Thomson:** We welcome that view.

**The Convener:** We have explored the issue quite a bit.

**Claudia Beamish:** I have a brief question on the same subject. The witness talked about the land being held for future development by an owner. As we know, land can sometimes be held as an investment to be sold rather than for future development. Will any timescales be set or considered for how long land can be kept that is not being developed but which might fall into other categories, which would enable communities to buy it? How long can the situation that I have described go on? I know of cases that have gone on for decades.

**Dave Thomson:** We will have to consider carefully whether that type of land being held for development would be excluded under the definition. The point that you make is a good one. At the moment, we are not thinking of specifying timescales, as what would be reasonable varies quite widely from case to case and from location to location. However, it is something that would be taken into account in deciding whether an application should be allowed for an area of land. As you say, if the land has been held for 10 years and is not moving or being actively marketed, that is a completely different scenario from that of a piece of land that has been on and off the market for five years, with the price being reduced over

those five years in an attempt to sell it. We want the opportunity to consider such matters on a case-by-case basis.

**The Convener:** On the other hand, it would give the community time to register an interest to buy.

**Dave Thomson:** Yes.

12:30

**The Convener:** We move on to the meaning of community. We need to clarify whether the amendment to section 53 to include community benefit companies will be extended to legal entities that can use the provisions on community right to buy in part 4 of the bill.

**Dave Thomson:** In addition to the inclusion of SCIOs, that is one of the most frequent suggestions for inclusion that is made to us. We are certainly looking at that.

**The Convener:** So that would be development groups, for example.

**Dave Thomson:** I do not know, off the top of my head, whether they are included—that is just my ignorance of what a bencom is or is not.

**Rachel Rayner:** In the same way that the articles of companies limited by guarantee have to meet certain requirements, the constitution of a SCIO has to meet certain requirements if it is to be a community body, and if bencoms were to be added, consideration would need to be given to what would be the appropriate requirements of a bencom.

**The Convener:** Okay. We will see where that goes.

Given the importance that the land reform review group placed on amending part 3 of the 2003 act, on crofting, why was there not a full consultation on that? Is the bill team satisfied that the dialogue with stakeholders has been sufficient and proportionate? Would it not have been more helpful to introduce these amendments in the forthcoming land reform bill?

**Dave Thomson:** The reason why the changes to part 3 of the 2003 act, on the crofting community right to buy, were not included in the initial phase of this bill was largely because all available resources were focused on improving the community right to buy in part 2 of the act and developing provisions for neglected or abandoned land. As the pace of land reform in Scotland increased, with the likes of the land reform review group, it became more and more clear, in conversations with stakeholders, that the changes to part 3 should be included in this bill rather than in any land reform bill that may come along in future. We thought that it was best dealt with now.

The need for consultation is one of the reasons why we have written to stakeholders on the changes that we are considering to part 3. As I said, we met stakeholders last week in Edinburgh, and we are meeting them tomorrow in Inverness and next week on Harris and Skye.

The land reform review group took evidence that we have looked at; for example, Simon Fraser had some very good points to make. We are speaking to Simon next week to get his thoughts on our proposals. Although the changes to part 3 were not part of the first phase of the bill, we are actively pushing that now and getting stakeholder opinions on the issue.

**The Convener:** As there are no further comments on that, we move to amendments to parts 2 and 3.

**Dave Thomson:** The letter from the Minister for Local Government and Planning to the Local Government and Regeneration Committee states that he

“will also be seeking to make further amendments to Parts 2 and 3A of the Land Reform (Scotland) Act 2003”.

Given that the land reform review group and others have identified flaws in part 3 of the 2003 act, why is the proposed new part 3A based on it?

**Dave Thomson:** Based on what?

**Dave Thomson:** On part 3 of the 2003 act. There has been criticism of that. The minister has said that amendments will come along. Have those already been taken into account? If so, why is the minister, in his letter to the Local Government and Regeneration Committee on 6 November, saying that further amendments are coming? I am a bit confused by that.

**Dave Thomson:** The simple issue is one of timing, as much as anything else. Part 3A was based on part 3 in the first place because of the compulsory element of the purchase. It was felt that the process for the crofting community right to buy was a much better template than the process under part 2, which is pre-emption, so we used that template.

Because the changes to part 3 of the 2003 act are coming in after stage 1 of the bill, yet the proposed new part 3A of the act is in the bill at stage 1, it will be necessary to tie up the two elements where a change is made to part 3. We will need to balance part 3A up to mirror that change, where relevant. It is really an issue of timing—it is almost a catch-22 situation. If you change one, you need to make sure that an equal and relevant change is made in the other. There will be changes, and it will depend on what changes to part 3 are approved.

**The Convener:** I think that I follow.

**Dave Thomson:** I may not be explaining it very well.

**Rachel Rayner:** Part 3A is not identical to part 3, so to some extent it is a case of looking to see whether we need to change part 3 to make it consistent with part 3A or whether there are good reasons for the differences. Additional changes to part 3 may be suggested through the consultation, and if we make those changes we will need to reflect back and ask whether we also need to make changes to part 3A and whether that is relevant to part 2, so that we can be confident that there are good reasons for any differences.

**Dave Thomson:** When are we likely to see those amendments? They will obviously have to be dealt with at stage 2, so when is the committee likely to see the amendments that are likely to affect us?

**Dave Thomson:** It will be about the turn of the year, at the end of December. It depends on the drafting. We have the consultation period for the part 3 changes, and our last visit on that is next week, so we will take people’s views on board in our consideration and will decide what changes, if any, we need to make as a result. That process will need to be concluded and then the drafting will take place. Ian Turner may have a better idea of the timescales.

**Ian Turner:** I think that the turn of the year would be the earliest for some of them. The Minister for Local Government and Planning, Derek Mackay, gave an early indication of the amendments that might be lodged for other parts of the bill, and we will seek to do that wherever we can in respect of the parts of the bill that we are now discussing so that we can let the committee know as soon as possible where we are minded to make changes. It will be for the minister to write to the committee at that point in time.

**The Convener:** There are no other points on that introduction to what seems like a complicated set of arrangements. I have no doubt that we will find out more as we go along. I thank the bill team and officials for their evidence. We will be taking further evidence from stakeholders, when many of those points will be teased out with the stakeholders who you seem confident are fully supportive.

We will be moving into private session in a minute or two. At our next meeting, on Wednesday 26 November, the committee will take evidence from the Cabinet Secretary for Rural Affairs, Food and the Environment on an affirmative Scottish statutory instrument, the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015, and then on the draft budget. The committee will also take evidence from stakeholders on the Community Empowerment

(Scotland) Bill and then consider its letter to the Scottish Government on the wildlife crime 2013 annual report.

12:38

*Meeting continued in private until 13:08.*

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