



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 10 December 2014

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**32<sup>nd</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)
- \*Alex Fergusson (Galloway and West Dumfries) (Con)
- \*Cara Hilton (Dunfermline) (Lab)
- \*Jim Hume (South Scotland) (LD)
- \*Angus MacDonald (Falkirk East) (SNP)
- \*Michael Russell (Argyll and Bute) (SNP)
- \*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)  
Dave Thomson (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

Wednesday 10 December 2014

[The Convener opened the meeting at 10:00]

### Decisions on Taking Business in Private

**The Convener (Rob Gibson):** Good morning and welcome to the 32nd meeting in 2014 of the Rural Affairs, Climate Change and Environment Committee.

Before we move to the first item on the agenda, I remind everyone to switch off mobile phones because they could affect the broadcasting system. However, we provide meeting papers in digital format, so people might notice some committee members consulting tablets during the meeting.

Under agenda item 1, the committee must decide whether to consider items in private. Do we agree to take agenda item 4, which is consideration of the evidence on the Community Empowerment (Scotland) Bill, in private?

**Members indicated agreement.**

**The Convener:** Do we also agree to consider the committee's report on part 4 of the Community Empowerment (Scotland) Bill in private at future meetings?

**Members indicated agreement.**

## Community Empowerment (Scotland) Bill: Stage 1

10:01

**The Convener:** Agenda item 2 is evidence from the Cabinet Secretary for Rural Affairs, Food and Environment on the Community Empowerment (Scotland) Bill. Good morning to the cabinet secretary, Richard Lochhead, and to Dave Thomson, the head of the land reform policy team in the Scottish Government.

I refer members to the committee papers.

Cabinet secretary, do you wish to make an opening statement?

**The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead):** I can say a few very brief remarks.

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

**Richard Lochhead:** I welcome Michael Russell to the committee; it is good to see a new face here. I also pass on apologies from Dr Aileen McLeod, who should be here rather than me. She is at the climate change talks in Peru, so I am stepping into the breach.

I realise that the committee is on a tight schedule, but I welcome the opportunity to have a discussion and to give evidence on such an important bill.

Land reform as a whole is undergoing huge change. There have been recent announcements on a new land reform bill, the extension of the Scottish land fund and our continuing commitment to have 1 million acres of land in community ownership by 2020. That target will come closer to being a reality as a result of the introduction of the Community Empowerment (Scotland) Bill because of the extension of the right to buy to urban areas, which means that communities across Scotland will have an equal right to take control of assets to empower their community. By tackling the blight of abandoned or neglected land, we will remove one of the obvious barriers to sustainable development in many of our communities. A community need not wait for such land to come on to the market, but can force a sale without a willing seller.

We have used the last 10 years' experience of the Land Reform (Scotland) Act 2003 to ensure that the new act will be easier to use and will give communities greater flexibility. As a whole, the Community Empowerment (Scotland) Bill creates new rights for community bodies and new duties on public authorities, providing a legal framework that will promote and encourage community empowerment and participation. The bill aims to support approaches that can contribute to

improving outcomes in all aspects of people's lives and to the growing sense of democratic renewal and change in our country. There will continue to be discussions with stakeholders.

I welcome any suggestions from the committee that would help to improve part 4 of the bill.

**Graeme Dey (Angus South) (SNP):** Good morning, cabinet secretary. The committee has taken some limited evidence that rather than be included in a broad bill, the provisions in part 4 would have sat better within the forthcoming land reform legislation. Why was it felt that the bill was the appropriate vehicle for the provisions set out in part 4? What was your thinking? How will you assist communities and community organisations to undertake buyouts? A persistent criticism of public policy is that high-level Government policy gets bogged down in interpretation. How will you ensure that your policy is implemented?

**Richard Lochhead:** As I said in my introductory remarks, Scotland is embarking on a programme of land reform. The Government has brought forward or is about to bring forward various vehicles in that regard: there is the land reform bill; the Community Empowerment (Scotland) Bill; and the agricultural holdings review, which relates to tenant farming and how we use our land for tenant farming and agriculture. Over and above that, there is on-going activity that was already in train; and we also have the land fund, which has been boosted from 2016 onwards.

I look at this as a process of land reform in Scotland. It is a wide programme with various elements of activity. At the time of drafting the Community Empowerment (Scotland) Bill, we wanted to use that vehicle to do things quickly. At the time, the land reform review group was doing its work and we were awaiting its recommendations, of which we now have 62. Many of our stakeholders are quite content with the fact that we are using the bill to fix some things that need fixed in the Land Reform (Scotland) Act 2003.

**Alex Fergusson (Galloway and West Dumfries) (Con):** We have asked all the witnesses from whom we have taken evidence about the policy memorandum that accompanied the proposals. Generally speaking, people have been reasonably satisfied with the level of information that was provided in it, although, as I suspect that you are aware, the Local Government and Regeneration Committee had some concerns about that information and, indeed, wrote to the Government about it.

The fact is that the policy memorandum devotes fewer than three pages to the whole of part 4 and summarises 20 sections in seven bullet points,

which seems a remarkably robust bit of précis-ing, if I may put it that way.

Last week, two of our witnesses raised questions about whether they had received enough information. One said,

"I am not sure that we have had enough information. I have come to that conclusion having discussed elements of the bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information".—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 3 December 2014; c 10.]

How best do you achieve a balance between encouraging public dialogue and participation and providing clear and sufficiently detailed information? Are you satisfied that the policy memorandum provided enough information to fully explain the purpose of the bill and the policy choices in it?

**Richard Lochhead:** Clearly, the Government always faces a challenge when we publish our policy memorandums. The objective is to give a message about what the Government is trying to achieve and its policy objectives. The memorandum should be relatively high level and broad, so that people understand the thrust of what we are trying to achieve with the legislation. If we publish a document with many, many pages of detail, the message about the policy objectives might get lost. It is a balance that Governments always struggle to achieve.

Again, I note that feedback from stakeholders shows that they are quite content. They understand the objectives of the bill and feel that we have given a succinct explanation of the policy objectives.

Clearly, one of the headline policy objectives in part 4 of the bill and the corresponding part of the memorandum is the extension of the right to buy to urban communities. Another headline policy objective is the right to buy land that is subject to neglect or abandonment. Those objectives are transformational, in many ways.

It is important to strike a balance that involves not going into too much detail while still getting across the policy objectives.

**Alex Fergusson:** The point that came out last week was that people who are used to dealing with legislation were happy with the information that was provided, whereas those who perhaps do not do so day to day found some of it quite confusing and were looking for further information. I merely leave that as a thought.

During last week's meeting, we heard an interesting statement from Professor Alan Miller, the chair of the Scottish Human Rights Commission, who said that he did not think that

human rights had been brought into the wider context of the bill to a great enough extent. He made some interesting statements about how it would be better if we concentrated on the wider human rights aspects of the legislation, as he felt that the debate had become a bit narrow and could have been much wider in its focus.

Will you elaborate on the extent to which it is the role of the policy memorandum to stimulate debate on wider issues such as those around the European convention on human rights, particularly given the prominence that the land reform review group gave those issues?

**Richard Lochhead:** ECHR issues have very much featured in our thinking about the proposals in the Community Empowerment (Scotland) Bill and will feature heavily in our thinking about what we bring forward in the land reform bill, once the consultation on it is complete.

We have to take many legal considerations into account and strike a balance between property rights and the public interest. Our ambitious proposals in the Community Empowerment (Scotland) Bill and that we will bring forward in the land reform bill show that we are giving prominence to the public interest, which, of course, we are able to promote under human rights legislation. As we move through the process of legislating on land reform, we constantly have to strike a balance between property rights and the public interest.

Debates on ECHR issues apply to many Government policy objectives and legislation, not just land reform. The policy memorandum must allude to those issues, but that is not its purpose. We have to get across our policy objectives in the policy memorandum, but that must be in the context of the ECHR.

I will reflect on the points that Professor Miller and others have made on this.

**Alex Fergusson:** Thank you for that response. The point that Alan Miller made that struck me as being really quite important was:

“If human rights is seen in the wider context that I have set out, there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities”.—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 3 December 2014; c 46.]

I hope that you agree that that would be a much more desirable outcome than the division and angst that are being aired in some quarters, with the possibility of a more confrontational element to the process. Do you agree that it is worth looking at those wider aspects in order to achieve a greater degree of dialogue in the whole process?

**Richard Lochhead:** Yes, and I have sympathy with Professor Miller’s comments. Scotland is now embarking on a wider debate than ever before on land reform in this country. A lot of radical measures will be coming forward—indeed, some have already come forward as part of the Community Empowerment (Scotland) Bill. Human rights are a central part of the wider debate about how we own and manage land in this country. What I am keen to see—as, I am sure, are many members of the committee and people across Scotland—is that we are talking about the rights of communities and the public interest as much as we are talking about the rights of property owners. There is a balance to be struck as we bring forward legislative proposals. In the debate on land reform and how land is owned and used in this country, we must have at the forefront of our mind the rights of communities and the wider public interest as much as the rights of landowners or property owners.

**Alex Fergusson:** I suspect that we might come back to one or two aspects of that later, but thank you very much for now.

**The Convener:** I take it that the cabinet secretary’s team is aware of the evidence given by Malcolm Combe, who has done work in South Africa, on article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights, which guarantees certain rights such as sanitation, food and housing. Any question of Scottish legislation being seen to be in breach of the ECHR could well have reference to that other, wider guidance from the UN.

**Richard Lochhead:** Yes. That reinforces the point that we have to take into account the human rights of everyone in society, not just landowners and property owners, which is sometimes the safe option for legislators. We have to strike that balance.

**The Convener:** Indeed. We will move on to the financial memorandum. I call Jim Hume.

**Jim Hume (South Scotland) (LD):** Thanks, convener, and good morning, cabinet secretary.

The financial memorandum states that the bill should not place any significant additional costs on the Scottish Government and that

“All additional costs would be met from existing resources.”

However, it also goes on to state that there is a

“large degree of uncertainty on the level of costs”

for communities and landowners. What costs do you anticipate for communities and landowners? What costs might public bodies incur?

10:15

**Richard Lochhead:** As we move forward with land reform and the measures in this bill to extend the rights of communities, we face the challenge that everything will be demand led.

It is difficult for ministers and the Government to anticipate exactly what demand will be in the years ahead. However, we have taken steps to ensure that more funding is available to achieve our objectives. We have already announced that the land fund will increase substantially from 2016 to £10 million. We also have the empowering communities fund, which the First Minister announced in the past few days as part of our programme for Government and is a further £10 million that will be available next year. We will have to consider how to take that forward in future years. That money will be available to help communities to take advantage of the measures in the bill.

Because the bill deals with things that will be demand led, there is a degree of uncertainty in the financial memorandum, but we are confident that with the increased land fund and the other fund that I mentioned, funding will be available to help communities to take more control of their destiny.

**Jim Hume:** Will that extra money be directed to communities or to public bodies to help communities with the community right to buy?

**Richard Lochhead:** We will have to give some thought to that. Clearly the Government has commitments to carry more of the costs in relation to the community right to buy, such as balloting costs, and those will have to be met out of our budgets.

Primarily the budgets will be used for communities as opposed to public bodies. If there are costs for public bodies, we will have to take them into account. However, the primary focus of the funds is helping communities.

**Jim Hume:** In moving forward the community right to buy agenda, which organisations will need financial and administrative support? Has all that been worked out?

**Richard Lochhead:** Do you mean public bodies?

**Jim Hume:** I mean public bodies or third sector organisations.

**Richard Lochhead:** There will be an onus on many public bodies, including the Registers of Scotland, for which we will bring forward funding as we register the ownership of all land in Scotland over the next 10 years. That measure is all about transparency of land ownership in Scotland and will be a huge task in itself.

A number of public agencies and bodies will have to take the burden of this agenda as we move forward. Within our portfolios, the Forestry Commission will have a bit more work to do on promoting this agenda; we will have to look at Forestry Commission costs. However, a lot of the burden should not involve substantial costs and we will expect it to be carried within existing budgets.

The process is demand led and we do not know what neglected or abandoned land will be bought by communities or what applications there will be through the urban right to buy, or whatever. It is difficult to predict exactly which bodies will carry the costs or extra burden, but we will have to pay close attention.

As I said, we have brought forward substantial funds and we will need to keep reviewing those funds in the years ahead, as the legislation kicks in.

**Michael Russell (Argyll and Bute) (SNP):** Good morning, cabinet secretary. More availability of money would be a huge boost. In the past year, more money has become available and the idea of more money being available as a result of other changes is great. However, lack of money is only one problem. There is a quagmire of issues such as state aid rules, public finance regulations and a range of other matters, which can create genuine difficulties for communities when buying land or assets.

What is required—and I would be interested to know what steps you are taking to put this in place—is a diagram of the way through for communities. We need some thinking through of the difficulties that each community will have and to create a path for community purchase that is not bedevilled by those issues.

As you know, in my area we have the issue of Castle Toward, where state aid is possibly being used as an excuse to delay or even derail a buyout. In fact, political will would allow the buyout to take place without much difficulty.

**Richard Lochhead:** You have illustrated your interest in and knowledge of land reform issues. I hope that we will be able to tap into your ideas and that those will be reflected in the committee's recommendations at stage 1.

State aid has at times been a challenging issue for the Government in the context of the community right to buy, the use of the land fund and so on—I know that you have taken a close interest in the matter for many years. We recently issued fresh guidance, which takes a much more relaxed view of state aid issues. A community-run cafe in the middle of Argyll is not necessarily a threat to the competition 50 miles away, and we



are instructing that a much more relaxed attitude can be taken to such things.

Your point about equipping communities with more information about and understanding of the issues is a good one. We have to give much more thought to that. The land reform review group recommended that we set up a community land agency, and we have responded by saying that we will set up a unit in Government, which will look at the issues and work with communities, giving much better advice and operating as a huge support mechanism that facilitates community buyouts. An important function of the new unit will be to explain state aid and the pathway, as you put it, and I will ensure that it does that.

**Michael Russell:** That is helpful. May I press you a little on state aid? The new guidance is quite clear in saying that a much more relaxed view should be taken. Is it being punted—if I may use the word—to local authorities in an aggressive manner, so that they realise that those burdens will not normally exist in the context of community buyout?

**Richard Lochhead:** I will do my best to make sure that that is the case. The buyout of the Aigas forest in the north of Scotland has just been unlocked as a result of the more relaxed attitude to state aid rules, so there is evidence that the new guidance is being heeded. I take the point that we must ensure that all public agencies and communities are aware of the guidance and understand the message that it sends out.

**Michael Russell:** Is the message that community buyout will be easier to do?

**Richard Lochhead:** Yes.

**Michael Russell:** Thank you.

**Claudia Beamish (South Scotland) (Lab):** I will follow up on those points about support for communities. In view of Highlands and Islands Enterprise's social and land remit and the fact that other agencies are coming online, as you have highlighted this morning, are there plans to extend Scottish Enterprise's remit? Sometimes people say that there is no appetite for land reform in, for example, South Scotland, which I represent, but one wonders about the degree to which that is related to capacity building, support and advice.

**Richard Lochhead:** A key message from the land reform process on which we are embarking is that land reform is an issue not just for the Highlands and Islands but for the whole of Scotland, and that it is an issue for urban Scotland as well as rural Scotland. That is why there is a transformation in the approach to the land question in Scotland. All agencies, including Scottish Enterprise and Highlands and Islands

Enterprise, must play a role in taking the agenda forward.

On support for communities, I reiterate what I said to Michael Russell. We are taking significant steps to beef up the support from the Government and public agencies, to help communities throughout Scotland to go through the process. The unit that we will set up in Government in response to the land reform review group's request will be there to help communities in the south of Scotland as much as communities in the rest of Scotland—perhaps even more so, given that HIE has had a proactive role in the Highlands and Islands.

There is a debate about the remits of Scottish Enterprise and Highlands and Islands Enterprise. They are an issue. There are historic reasons why Highlands and Islands Enterprise has a social remit. Scottish Enterprise has a role in its rural communities but not the social remit that Highlands and Islands Enterprise has. Discussions about those matters continue between me and other ministers who have responsibility for the enterprise agencies. We will have to give some thought to how the social remit is taken forward outwith the Highlands and Islands.

**The Convener:** We talked about many of the public agencies that might be involved in, or could have to bear the burden of, dealing with the transfer of land. Is this an opportunity for us to include the Crown Estate in our thoughts? Lord Smith has suggested that much of its activities should be devolved to Scotland and that that could be done earlier than certain other, more complex measures, so perhaps we should think about the Crown Estate's involvement in liberating land for communities. It rents land—moorings, for example—to communities at present. In fact, it gave evidence to us that it is selling areas of the foreshore on the Isle of Lewis to a local community. Is that the best way for the Crown Estate to be divesting, or does best value only include market value for the Crown Estate? Should we consider including in our thoughts about the public agencies the Crown Estate's role in releasing land for communities?

**Richard Lochhead:** I welcome the Smith commission's recommendation that the assets of the Crown Estate should be devolved to the Scottish Parliament. That is long overdue. Indeed, at least one of the coalition parties in the United Kingdom Government promised it back in 2010 but we are still waiting in 2014. Finally, we have a recommendation.

As you will be aware, the Scottish Government is calling on the UK Government to ensure that the commission's recommendations are implemented as quickly as possible. Some could easily be implemented rather more quickly than others. I

have suggested that the recommendation that the Crown Estate's assets be devolved is one that could be implemented sooner rather than later.

You asked a couple of questions about the Crown Estate's current activities. I ask it to begin to act as if its activities were already devolved. I would like the democratisation and accountability of the Crown Estate put into place as soon as possible. In other words, even though its activities are not formally devolved at the moment, I ask the Crown Estate to consult our local authorities and, indeed, the Scottish Government on any disposals. I make a plea for it to act as if its activities were already devolved, because that would be a sign of respect from the UK Government and the Crown Estate.

Your second question was about moving forward. Many of the Crown Estate's powers will be devolved to the local level, particularly to our island communities. The economic and social element of how the Scottish Government manages the Crown Estate's assets in Scotland should reflect our land reform agenda and our other social and economic policy objectives. One of the key benefits of the devolution of the Crown Estate's assets to Scotland is that we would clearly ensure that how they are managed reflects our social and economic objectives.

**Jim Hume:** Highlands and Islands Enterprise has been very involved with community buyouts and Scottish Enterprise has not. The devolved budgets of the local enterprise companies were taken away many moons ago and all the decisions for Scottish Enterprise seem to be taken in Glasgow now, so there seems to be a contradiction. In the draft budget, we see that about 96 or 98 per cent of the rural enterprise budget is to disappear. How do you balance stating that you hope to do more with Scottish Enterprise in the communities against the history and the proposed budget, which seem to say the opposite?

**Richard Lochhead:** Even though the social element is not a formal part of Scottish Enterprise's remit in the same way as it is for Highlands and Islands Enterprise, that does not mean that Scottish Enterprise is not responsible for promoting sustainable development in rural communities in the south of Scotland or anywhere else. That is the point that I was making.

You will know that in the budgets for Scottish Enterprise in recent years an extra focus has been given in its key objectives to working with businesses in certain parts of the economy. The backdrop to that is the financial climate that we have had to cope with when drawing up budgets at Scottish Government level. Moving forward, however, I have acknowledged that, in delivering the land reform agenda and the social agenda

overall, we must ensure that Scottish Enterprise is playing its role as much as Highlands and Islands Enterprise will continue to do under its remit.

10:30

**The Convener:** Members have some other points to make regarding the Finance Committee's view.

**Angus MacDonald (Falkirk East) (SNP):** You will be aware of the Crichton Down rules, which provide for situations where land that has been compulsorily purchased by a public authority is then deemed surplus and subject to disposal by that public authority. In such cases, it is Government policy for the previous owner to have right of first refusal. Do you have a view on how the extension to the community right to buy might interact with the Crichton Down rules?

**Richard Lochhead:** Ah, the Crichton Down rules. Of course, I am an expert on those rules—at least, I became one in the 30 minutes before coming into the meeting.

I have looked into the matter, which I know has featured in previous discussions at the committee. Essentially, as I understand it, it relates to land that has previously been compulsorily purchased, probably by public agencies, for certain reasons. The previous owner has the first option when the property or land is being disposed of. The question that you quite rightly ask is how that interacts with the community's right to buy.

Our view is that it will depend on what is in the public interest. The rules do not preclude a community having the right to buy, but it would be considered on a case-by-case basis whether what the community proposes is in the public interest. Again, the message that I am trying to convey is that the rules would not preclude communities having the right to buy, but I cannot speak for every single potential case that may come forward.

Clearly, where public agencies compulsorily purchase land, that is for a whole variety of reasons, so it is difficult to predict what will happen in each case. The rules are not statutory so, although they will be taken into account, they will not necessarily determine the decision as to whether a community could buy land.

**The Convener:** We abolished pre-emption when the feudal system was changed. For instance, schools that were no longer used would go back to the landowner who provided the land in the first place. Surely we would adopt the same approach with regard to land that had been compulsorily purchased, which is a very similar circumstance to those where the Crichton Down rules apply. However, they are only rules.

**Richard Lochhead:** Exactly—they are only rules. I will reflect, as we take the bill forward, on how best we should handle the issue. I would welcome the committee's views on how best it can be handled.

**Michael Russell:** The Crichel Down rules arose out of a case where the Minister for Agriculture and Fisheries had to resign, so I am sure that you will take them to heart.

It would surely be possible to modify the rules simply by applying an additional test: whether the land in question, had it not been purchased by the Government, was likely to have been available for community purchase. The rules apply to land that was bought from private landowners. Given that they apply to land bought during the second world war, the test would be easily applied. If that test was applied, most land would not be covered by the rules.

**Richard Lochhead:** I knew, when I said that I was an expert on these rules, that Michael Russell would be sitting there thinking, "Not as much as I am." I do not want to resign over this issue, and I will ensure that we clarify the matter. I take Michael Russell's point, and I am sympathetic to it, in that it seems that it should be relatively simple to get round the matter. I will reflect on it.

**Angus MacDonald:** Sticking with the financial memorandum, I note that an issue was highlighted in the written evidence from sportscotland, which stated:

"We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources ... we are required to ensure we protect the additionality principle."

Are you in a position to clarify how rules relating to lottery funding might impact on the community right to buy?

**Richard Lochhead:** I will have the lottery funding rules checked and double checked as we move forward, but in general the rules relating to lottery funding would not have any impact on the right to buy and we do not see a conflict there. I will want to double check the lottery rules to make sure we get that right, but our initial view is that there is not a conflict and it should not present a problem.

**Angus MacDonald:** Okay. That is good. Thanks.

**The Convener:** We move on to questions on the delegated powers memorandum, starting with Cara Hilton.

**Cara Hilton (Dunfermline) (Lab):** Good morning, cabinet secretary. The Delegated Powers and Law Reform Committee has raised a

concern about proposed new section 97C(3)(a) of the 2003 act, on eligible abandoned or neglected land, stating that the provisions on eligible land, individuals' homes and prescribed classes are vague in respect of how the power will actually be used. It has said that the Government's explanation so far is

"inadequate in light of the significance of this power".

What is the thinking behind taking the new power? Can you offer any examples that demonstrate how it may be used in practice and explain how you intend to use it?

**Richard Lochhead:** It is clearly to give ministers the opportunity to exclude land from the right to buy, and the obvious case in point is someone's home that happens to be part of the area that a community wishes to purchase.

We would take a sensible approach to these issues. The next question would be, "How do you define a home?" If someone lives there once every two years or has not lived there for five years, is it still their home? Clearly, we would have to draw up some rules and guidance to define the issues that we would take into account in determining whether a home should be excluded in an individual case.

I know that there are some concerns that we have perhaps overegged the pudding in relation to the power, so I am going to review that. Ministers will review it. We will still have to have the power to exclude homes, for example, but I am reflecting on some of the comments that the committee has received and, again, if the committee has specific views on the delegated power and how it should be used, I will welcome them.

However, the purpose is just an obvious one. There are some areas that would have to be excluded.

**Graeme Dey:** In talking about the rules and guidance being drawn up, you used the phrase "sensible approach". Current Scottish ministers may well interpret the rules in a fair and appropriate way, but how do we ensure that successive ministers in years and decades to come will do the same thing? How do we draw up the powers in a way that ensures that they will only ever be used properly?

**Richard Lochhead:** First, there will be what is in the bill and then there will be secondary legislation, if required, to give further definitions. We are giving some thought to that.

As is always the case, future ministers will have to make a judgment, when they receive an application, on whether they can defend its falling under certain rules or exemptions.

As I said, we will give some further thought to the power to ensure that it is easy to understand and simple to put in place, but there is a case for having some exclusions.

**The Convener:** We move on to questions about the nature of land in which an interest may be registered, starting with Jim Hume.

**Jim Hume:** My question is about extending the community right to buy to urban areas. The Law Society of Scotland has some concerns about that. It stated:

“a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests.”—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 26 November 2014; c 40.]

It went on to say that there should be some safeguards to balance that out. Do you share the Law Society's concerns about potential development blight? Are you considering lodging amendments at stage 2 to address that?

**Richard Lochhead:** With any application for the right to buy, ministers must take into account a couple of tests. They must consider first whether the community's proposal would promote sustainable development and whether it was in the public interest, and secondly whether leaving the current ownership arrangements in place would further sustainable development. In other words, it is a double test. It is clear that the issue of blight would be taken into account as part of that test. If ministers judge that an application would be in the interests of sustainable development, that would suggest that there would not be a blight. If ministers took the view that the community's proposal would cause significant blight and would harm sustainable development, they would have to take that into account in deciding whether the community could register for the right to buy. The Law Society describes a scenario that would be taken into account as part of the process. Ministers would not want to create a blight, because a blight is negative. That would be taken into account in the context of sustainable development.

I will give an example to make the situation a bit more understandable. If a nice new block of flats was being built and that was good for the area but an application was suddenly made to buy part of that land, it could be argued that that could cause a blight. Ministers would have to take into account whether accepting the application would be good for sustainable development. It might be in the interests of the community that the block of flats is not blighted and is allowed to be built, in which case ministers would not allow the application to proceed. There are ways of avoiding blight.

**Jim Hume:** Thanks for that.

I turn to some evidence that we received—last week, I think—on land that local authorities hold. We heard that Glasgow City Council has bonded some of its land to Barclays Bank, so it would be extremely difficult for it to release that land for communities. The same situation might exist in other local authority areas; I do not know whether you have evidence on that.

That aside, some local authorities might consider the best value of the land that they hold to be the best financial value that they can obtain for their taxpayers. They might regard financial value rather than value to the community as being their number 1 priority. What are your thoughts on how local authorities interpret best value? Could that be a potential hindrance to some communities that might want to access local authority land or the land of other public bodies?

**Richard Lochhead:** Local authorities have the power to dispose of land at less than market value and they can treat the public interest as having a value. Therefore, the issue that you raise should not be an obstacle. Local authorities have discretion when it comes to how they define the value of the public interest and whether they want to sell at market value. We encourage local authorities to recognise that supporting the public interest has a value. When a council looks at the value of what it will receive for disposing of an asset, it is not always the monetary value that it considers; it takes into account the value to the community of the asset and the value of the public interest. That should be a factor in the thinking of any local authority.

**Jim Hume:** I guess that some local authorities might take a different view from others. What mechanisms would be available to a community that had got to the stage at which the local authority had decided that it did not want to sell below market value because it felt that it had to look after the ratepayers? Where would the community go from there?

10:45

**Richard Lochhead:** I hope that such situations will not occur—or would, at least, be very rare. We should take a step back and remind ourselves that many of the negotiations are conducted in a constructive manner. I hope that local authorities will engage with communities constructively, as they often do, and reach agreement. There is not a great history of local authorities and public agencies trying to frustrate or resist the aspirations of communities.

There is no formal mechanism by which people can intervene to force a local authority to sell, other than the provisions on neglected and

abandoned land. It is not always easy to give answers for all the potential scenarios. We must try to avoid such situations in the first place; ensuring that our local authorities engage constructively with communities is the best way to do that.

**Jim Hume:** I appreciate that. I hope that such situations are rare, but I would appreciate it if the cabinet secretary would keep an eye on the matter in some way and perhaps even give some guidance to local authorities on taking a broader view of their assets than they perhaps have in the past.

**Richard Lochhead:** That is a perfectly fair point, and we will be keen to do that as we progress the bill. Again, if the committee has any specific suggestions to address that potential scenario, we are all ears.

**Jim Hume:** Okay. Thank you.

**Michael Russell:** Would it be possible to address that issue in the proposed land reform bill, through a putative land commission or standing land body to adjudicate in cases in which local authorities are endeavouring—as, regrettably, they sometimes will—to frustrate communities?

**Richard Lochhead:** That is a good suggestion, and we can ask the Government unit that we are setting up to facilitate community purchases to look at the matter and to take responsibility for helping to mediate and facilitate in such cases. It is a perfectly sensible idea.

**The Convener:** You said that you are not sure whether you have powers to ensure that local authorities divest themselves of land in a fashion that is suitable for communities. Could the land commission develop that sort of thing, or should it be written into the land reform bill?

**Richard Lochhead:** Local authorities have guidance, and there are statutory obligations with regard to some of the issues that have been raised. I was trying to address the specific scenario that Jim Hume mentioned.

I want to clarify two points on the land reform review group's recommendations. First, the land commission, which will be a standing body that we will set up in due course, will deal with land reform issues, advise Government on how to solve them and take forward certain policy objectives.

Secondly, there is the land unit within Government, which will be the equivalent of the community land agency that the land reform review group recommended be set up. It will facilitate and advise communities in order to help to further community ownership of land.

On your question, convener, there will be two bodies, and the matter that you mentioned would

be for the land commission to look at with regard to there being a public agency and public land involved. The Government is already committed to facilitating public land being made available to communities. If specific problematic scenarios arise, we would seek advice from the land commission.

**The Convener:** Jim Hume and Mike Russell have asked questions that have arisen in particular from evidence from the city of Glasgow. We do not know what other local authorities think about the issue and that information could be a valuable part of the process for the Community Empowerment (Scotland) Bill. Is the Government in a position to find out for us what other attitudes exist out there?

It was quite shocking to hear that it is likely that much of the derelict property in Glasgow could not be passed to communities. The attitude of local authorities to passing on resources was brought into question by a witness who suggested that councils know how to look after the resources but communities probably do not.

**Richard Lochhead:** Again, that is a good point. A number of members have raised the issue, so please let me reflect on it and consider whether we can do anything at stage 2, and whether we should have separate communication with local authorities. We all want to further the policy objective of increased community ownership. I am sure that that applies to local authorities as much as to the Scottish Government, and we have to work together to achieve that. If there is something that we should do at stage 2, or if we should do something else, I am keen to consider that and to reflect on what members have said.

**Michael Russell:** There is no doubt that the Scottish Government and many communities are committed to land reform and transfer of assets. The question is whether local authorities are fully committed to it. That is not a blanket statement about local authorities, but if they are not fully committed to it—some have entered into arrangements that make it impossible, as is the situation in Glasgow, and others' enthusiasm is not palpable, as I think we could put it—there will need to be a mechanism to drive forward transfers. The question is about what that mechanism would be, where it can be found and how it can be put in the bill, because that will be essential.

**Richard Lochhead:** I take the point. As the cabinet secretary, I expect—and the Government expects—all public authorities and bodies to deliver the policy objectives that Scotland wants to be delivered. A mechanism needs to be designed, and we will certainly reflect on what that can be.

**The Convener:** We move on to the meaning of “community”.

**Claudia Beamish:** Obviously, the definitions of “community” are complex and varied. As you will know, under section 34 of the 2003 act, only a specific legal entity—a company limited by guarantee—can register an interest in an asset. There are issues about postcode units, which we have heard about in the committee. There are also issues about Scottish charitable incorporated organisations, or SCIOs. Community benefit societies, or bencoms, have been raised as a possibility, although they are not identified in section 28 of the bill. According to the policy memorandum, section 28 will make it easier for communities to define themselves in a greater variety of ways than only by postcode.

Although the oral evidence has broadly supported that amendment to the 2003 act, opinion is divided on communities of interest. Someone stressed that defining communities of interest could be

“a good deal more complex.”—[*Official Report, Rural Affairs, Climate Change and Environment Committee, 26 November 2014; c 45.*]

On the other hand, it has been argued that a way has to be found to put more

“emphasis on people rather than place”.

Those views were expressed to the committee. It is important that the committee be made aware of the cabinet secretary’s view on the issue. Is it your intention to deal with any of those issues by amendment to the bill or in subsequent guidance? What is your view of the evidence that it might be more helpful to specify the characteristics of an eligible community body rather than the types of legal entities? The issue is quite complicated, so it would be helpful to know your views.

**Richard Lochhead:** That issue has featured in the committee’s discussions and we, too, have given thought to it. Clearly, one of the purposes of part 4 of the bill is to make it easier for communities to register an interest in and, ultimately, to take over land. To make that a bit easier and to streamline the relevant provisions, the bill will relax the definition of “community”. You are right that it will now include not just companies limited by guarantee but SCIOs, which are creatures of the Office of the Scottish Charity Regulator. We are considering potential stage 2 amendments to extend the list, perhaps to other kinds of community bodies that can be created.

However, it is important that the community that defines itself as a “community” is actually the community. The idea that we should allow a community of interest to be included in the definition of “community” gives us some concerns. Therefore, we are not proposing to include it in the

definition because it is quite clear that a body could be set up that has an interest in the community but is not the community itself. We want to maintain the sense of place and ensure that we are genuinely dealing with the community.

In theory, a community of interest could be an organisation that is based far away from the community. It might have some local members and it might have an interest in the community, but that is not really a community, in our view. It does not have a sense of place and it is not rooted in a place. We want to avoid going down the route of allowing communities of interest to be defined as communities.

**Claudia Beamish:** Might that be quite restrictive? If an ethnic minority group in a large city wanted to buy some land for a purpose that was related to the community, the group could be from an area that was much larger than a clearly defined smaller geographical area or place. That is just one possible example. Might there be many such groups that could cover areas of interest?

**Richard Lochhead:** First, we will ensure that we can introduce more definitions of “community”, should we decide in the future that there is a case for extending the definition, but we do not want to open the gates too much to new definitions, which could create problems in the future.

I am trying to think of an analogy. Wind farms in my constituency have been opposed by many people and it has transpired that 70 or 80 per cent of the people who were opposed live several hundred miles away. They may argue that they have a community interest but I do not think that anyone would recognise them as being “the community”. We have to strike a balance. Inclusion of communities of interest in the definition could just open the gates too wide—it may allow the definition of community to be too wide, rather than it including the genuine sense of place and community that we expect when it comes to a community taking control of its own destiny.

I will reflect on the committee’s views. We have a Dave Thomson and a Dave Thompson here today. I will ask my Dave Thomson to say a few words.

**Dave Thomson (Scottish Government):** The bill does not categorically preclude communities of interest. For example, the Leith Amateur Dramatic Society is a community of interest in terms of the “Dramatic Society” element. We would expect the majority of its members to be situated in Leith, within the geographical area that a community body would be set up to cover.

One of the issues that we have with communities of interest is that as part of the process of purchasing an asset, a community

body has to conduct a ballot. Who would be eligible for that ballot in a community of interest? In terms of the practical process, we have to be able to check that everybody on the list is eligible—to be slightly flippant, we have to check that Mickey Mouse, Donald Duck and so on are not on the list. That kind of check is very difficult to do with a community of interest.

The Leith Amateur Dramatic Society also has the element of its being based in Leith, so the members of that community of interest who stay within that geographical area can set up a community body because it has that geographical element. They will have the right to set up the body and to vote and so on. I realise that that example does not cover all communities of interest. The geographical element addresses the issue of whether a community of interest that is 600 miles away can influence what is happening in the community next door to you.

**Claudia Beamish:** I understand the argument that you are making—it is very important that membership of a community of interest be clearly defined. However, the situation in the area that I represent is slightly different to the Leith example. I know people in rural Clydesdale who travel 20 or 30 miles to go to Strathaven Choral Society. We need to look at the definition in relation to people as well as place.

Finally, it has been suggested that specifying the characteristics of an eligible community body would be more helpful than specifying the specific types of legal entity. Would that help to make it more possible for communities to register?

11:00

**Richard Lochhead:** If we choose to define the characteristics rather than the entities, we open up a can of worms; there would need to be a debate about what the characteristics should be and then we would stray into other areas. We have to be cautious about that. However, as I said, we are keeping an open mind and we will be able to introduce additional definitions through secondary legislation, if we think that that is required. If the committee has strong views on the matter, it should convey them to the Government.

**The Convener:** I am sure that we will.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** We have had quite a bit of discussion in relation to the registration process and whether pre-registration should be necessary. Many communities will not know that a piece of land will need to be taken over until something happens. We heard evidence from the Holmehill community about land that was a great asset and that the community thought was public ground, but which was suddenly put on the market. Do we

need pre-registration of any kind? I will follow up on that after your initial comments, cabinet secretary.

**Richard Lochhead:** Dave Thompson has raised a fundamental point. The Government has to balance people's right to sell their assets with the rights of the community. There are a couple of issues to take into account. As part of the process for application, we have to know that there is a community and that the community is taking steps to take on the responsibility of ownership. If there were no need to register, and the land came up for sale before the process was in place, although there might be people willing to register, there might be no real community, so one would have to be created. Under the process that we are suggesting there would already be a defined community, which is preparing and thinking about the future, and about taking on the responsibility for ownership and everything that comes with that, and which has a vision and a desire to take more control over its destiny. Under our proposals, that will all be in place before the process kicks in. Not only would there be the challenge of creating such a community, but we would also be interfering with the rights of the individual or body that wants to sell property or assets in that they would be disadvantaged by having to wait. The seller would have to wait until everything was set up, the community was formed, the plan was put together and the various processes for getting the go-ahead had been gone through.

If you were selling a bit of your land, would you want to wait a year or two after putting it on the market before you could actually do anything, because the Government had stopped you from selling while the community was being created? We believe that that would interfere with people's right to sell their assets, whereas the process that is outlined in the bill is a bottom-up process that will allow a community to express its desire to control its own destiny. That is the rationale.

**Dave Thompson:** If there must be some kind of pre-registration—as opposed to late registration, which I will come on to in a minute—it was suggested to us, I think last week, that it might be better if a community could register interest in relation to a purpose rather than interest in a specific piece of land. A community might have aspirations to create a park or build something for a function, for example, but it might not be aware of suitable pieces of land or buildings. What is your view on enabling communities to register for a purpose rather than for a specific piece of land or building?

**Richard Lochhead:** The issue has come up in discussions with stakeholders, and Dave Thomson might be able to update us. Your point brings me back to what I said about balance. When land

came up for sale, there would still be an issue to do with how it related to the purpose for which the community had registered.

**Dave Thomson:** The issue relates to one of the changes that the bill will make. Currently, if an application is late, the community body must show that there are good reasons for that. That is being changed to require the body to have undertaken “relevant work” and “relevant steps” that ministers consider to be reasonable.

The provision is intended to cover the sort of scenario that Dave Thompson is talking about, when a community body exists and has considered the community’s needs. Determinations will be made on a case-by-case basis, but that consideration might be one way to show that the body has undertaken “relevant work” prior to the land going on sale.

We are trying to allow more flexibility, so that communities can say, “This is the work that we have done, although we haven’t filled in the form yet.” A community body might have identified a need for five hectares, without specifying which hectares and where. It might have held a community meeting and secured the community’s agreement and support for its ideas. Those are examples of “relevant steps” and “relevant work” that ministers might consider reasonable, although of course decisions would be taken on a case-by-case basis.

**Dave Thompson:** I understand that, and I want to come on to late applications in a minute, but has thought been given to allowing people to register an interest for a purpose, rather than an interest in a piece of land or building?

For example, a group might want a skate park in its area, even though no piece of land is springing out as obviously suitable. Under the bill as drafted, it might have to register interest in a number of pieces of land, even though it knows that none of them will come up for sale. Instead, the group could go through what I hope would be a simple registration process, to show that it was a community body and to register interest in building a skate park for the youngsters, so that when land came up somewhere in the area—a piece of land might pop up that no one had thought would ever be available—it would be able to show that it had done everything and was ready to go. Will the Government consider such an approach?

**Richard Lochhead:** There is the potential for a community to qualify by showing that it has carried out work, albeit that it has not identified a specific parcel of land. We will reflect on the provision and consider whether it needs to be finessed, because the situation currently comes under the heading “late registration”, which is not quite what you are talking about, although there would potentially be

the same outcome. Although a specific bit of land would not have been identified, the work would have been done to enable the group to qualify for late registration if a piece of land came on to the market.

**Dave Thompson:** I can see that it might have the same outcome, but the difference is that the criteria that relate to late registration—this might be an opportune moment to come on to late registration—might be difficult for the community to meet. I suppose that, if the community had done the work already, that would not be an issue.

I want to make sure that it will be as easy as possible for communities to register. For example, why do we not allow them to register early for a purpose as well as for a piece of land or a building? Then, they would be registered, and their form would not be coming in late and therefore blocking somebody’s sale. It might be worth looking at allowing communities to register for a purpose as well as for a piece of land.

On the reregistration process, which it is suggested should involve a five-year period, we have heard evidence that 10 years would be more reasonable. Further, it should be easier for people to reregister. If there have been no material changes and they are just saying that they want their registration to continue, they should basically be able to sign a bit of paper saying that. At the moment, I understand that they have to go through the full process from scratch every five years.

**Richard Lochhead:** First, we are simplifying the reregistration process so that people do not have to start from scratch every five years. That will be addressed in the bill.

Your point about extending the five-year threshold to 10 years gives us a bit more of a problem. Things can change in 10 years. You can imagine a community defining itself, imagining its future, putting together its ideas and carrying out its registration but then finding that, 10 years later, things were quite different.

We do not think that 10 years would be a wise approach. The five-year period was our judgment of a good timescale. To a certain extent, we were just picking a timescale, but the five-year period was chosen because it is a reasonable timescale in which the land that is registered and the dynamic behind the community are unlikely to change dramatically. It was felt that over a longer period—10 years or whatever—things could end up being quite different, which means that the judgment that ministers have to make about whether to give the go-ahead would be based on different dynamics.

**Dave Thompson:** I suppose that, if the process were simple, it would not be too onerous to do it



every five years. I look forward to seeing that simple process.

**Richard Lochhead:** The concern is the fact that communities could change in 10 years. The people who have gone through the hurdles of registering—the 10 per cent of the community who have to get behind the registration in the first place—could have changed. Therefore, we think that five years is a sensible timescale.

**Dave Thompson:** I move on to the way that late registrations are proposed to be dealt with. The good reasons test has been taken out, which is welcome, but under the new test that has been put in the community has to show that such relevant work as ministers consider reasonable has been carried out.

The Holmehill community had lots of difficulty dealing with the current legislation. The piece of land that came up for sale in their area was a lovely piece of what they thought was common land. The community had no intimation whatsoever that there was any chance of that coming on the market, so it had done nothing. The new proposed test means that it would have not even been able to start the process of a late application. Communities are often not going to know or anticipate that certain pieces of land or buildings are going to come on the market. Is that not too tough a test for late registrations?

**Richard Lochhead:** To a certain extent, you are repeating the debate that we had a few moments ago about balancing the rights of the owner and seller and the rights of the communities. The argument addresses the same points, in that you are talking about there being no need to register and communities just having the opportunity to buy land that comes on the market.

**Dave Thompson:** That is not really what I am saying. Why should the community need to show that it has done anything prior to the late registration?

11:15

**Richard Lochhead:** The reason for that is that we are trying to balance the rights—which you understand that we have to do—of owners who are selling property and the communities. However, to make life easier for communities we are relaxing a lot of the criteria and we are making the process much more streamlined. We are empowering communities, although clearly you want to go a step further.

It is worth bearing in mind that in such circumstances negotiation often takes place. As we are all aware, the history of many community buyouts in Scotland has shown that negotiations take place and often are concluded to everyone's

satisfaction. What you are speaking about is a last resort. If the Holmehill community found that land that it had wanted but which it had thought would never come up for sale suddenly did come up for sale, I would hope that negotiation would take place with the seller and that the community would get access to the land. Using legislation in such circumstances would be a last resort.

I will reflect on your point. If the committee believes that there is a way that we can balance those rights and achieve the outcome that Dave Thompson wants to achieve, please make your recommendations and we will listen closely.

**Dave Thompson:** Thank you. I have a couple of other very minor points.

**The Convener:** Very minor points, please.

**Dave Thompson:** Yes—sorry, convener.

As I understand it, if a community successfully submits a late application for a piece of land that has come on the market and the landlord does not like that, the landlord can withdraw the land from the market, which kills the whole thing. Would it be worth considering including in the bill—or in regulation or whatever—something that would prevent a landlord from withdrawing a piece of land or a building from the market once they had put it on the market, to prevent them from thwarting a community's wish to buy it? If a community goes for something that comes on the market and the landlord thinks, "No way!" and withdraws it, the sale is dead. Is it worth looking at something to prevent such circumstances, so that once a piece of land or building is on the market, it is on the market and the community has a right to see the process through?

I have one other very tiny point. As I understand it, it is not possible to amend applications at the moment. If an application needs a minor change, the whole process must start again. There needs to be an ability to amend applications as they go through the process. We heard evidence on that last week from Simon Fraser, if I remember correctly.

**Richard Lochhead:** I will take away your point about amending applications once they are submitted, as the Government wants to co-operate with and help communities as much as possible. If there is a way of doing that, I am sure that we will find it. I will reflect on whether that needs to be included in the legislation.

In effect, what you suggested in your first question is the introduction of compulsory purchase. If a seller puts property or land on the market, they have the right to change their mind, as any of us would if we were selling an asset. Your point is that a landlord's motivation for taking something off the market might be the fact that the

community wants to purchase it. We would have to give some thought to how a provision to deal with that would work, because the outcome would be compulsory purchase.

There are powers forcrofting communities and neglected and abandoned land, but you are speaking about a further power: compulsory purchase in circumstances in which the motivation for taking land off the market is the fact that the community wants to purchase it. It would have to be proved that that was the motivation. I do not see an easy answer to that in the context of the legislation, so I will have to reflect on that.

**Dave Thompson:** I appreciate that response, although I think that, once land is on the market, that should be absolute, so people would not have to prove anything.

**Richard Lochhead:** Again, that would interfere with people's rights to change their minds. We are talking about not only landed estates or large areas of lands, but all kinds of assets. People must have the right to change their minds, as perhaps we would want sometimes to do.

**The Convener:** Part of the problem is about communication. Community planning partnerships were set up by the Scottish Parliament's first Executive, and they should be the places where people discuss the potential uses of parts of the land in their area.

Are CPPs providing the right kind of service in relation to the important new power that is being developed for communities to have a greater right to buy assets? Are they local enough to be able to do that? Are they active enough to engage people in the process that needs to take place and where discussions about potential matters of interest arise in relation to particular pieces of land?

**Richard Lochhead:** First, community planning partnerships should be local enough. The question is whether they are committed to the agenda and are spending enough time working together—which is the purpose of community planning—to facilitate issues of land reform further. That is something that we must pursue with regard to communication, working with our community planning partners across Scotland. We will undertake to do that.

**The Convener:** We will move on to the vexed questions of definitions of abandoned and neglected land. Mike Russell will lead us on this.

**Michael Russell:** When we took evidence last week and, I think, the week before—although I was not there—the issue of abandoned and neglected land was subject to some comment, for a variety of reasons.

First, the legal definition of “abandoned” land is not the definition in the bill, and the difference

would lead to some confusion. Secondly, in the words of one witness, the term is regarded as “suboptimal” in relation to what is trying to be achieved. Thirdly, there are some issues to do with the use of land that could lead to land being neglected by a tenant, for instance, but still perfectly usable by the owner. Some environmental issues might arise, too.

All in all, it was felt that considerably more work is required on the issue of abandoned or neglected land. There was also concern that, if the definition of “abandoned or neglected land” was left to guidelines, that would not be fair on anybody, and it might be subject to legal challenge.

There is a general set of concerns, not about what the policy intends to achieve—all of us know that, and it is quite easy to point to in urban areas in particular—but about how to achieve it in a way that is achievable, if I may put it that way, rather than in a way that could be legally challenged or lead to the legislation not being used.

What I am looking for is a commitment to take the matter away and consider it with a view to drafting amendments, so that the provisions can be more useful.

**Richard Lochhead:** One of the more radical aspects of the proposed legislation lies in the ability to buy abandoned or neglected land. We are giving some thought to whether there is a need for additional clarity. The views of the committee are most helpful, and Michael Russell has just made a couple of good points.

We have to balance the interpretation of “abandoned or neglected” with the need to make the definition relatively wide. If we are too specific, some circumstances that we do not wish to be excluded might be excluded. We have to be reasonably wide ranging in our definition, which is why the bill sticks to the simple dictionary definitions of “abandoned” and “neglected”, which everyone understands, and which we believe will give good grounds for communities to purchase land.

Some issues have been raised, including the definition of land that is

“wholly or mainly abandoned or neglected”.

Ministers will have the ability to interpret what that means. We do not want to dwell too much on definitions, because we are just dancing on the head of a pin, but, ultimately, ministers will recognise—as will the communities making the applications—what is “abandoned or neglected”.

You are right to point out that there are other facts that must be taken into account, including environmental considerations. If land appeared to be abandoned but that was because of

environmental designations, for example, it would clearly be exempt and the ministers would take that into account.

We will give some more thought to the arguments that have been made to the committee and to the potential need for more clarity. However, we do not want to narrow things down to definitions too much.

**Michael Russell:** That is very wise, but I disagree with you on the idea that everyone knows what the terms mean.

A wildflower garden to one person could be a neglected piece of ground to somebody else. "Neglected" is a very subjective term and, regrettably, "abandoned" has another legal definition: abandoned land is land that a landowner has deliberately walked away from and does not want. It is not theirs, as far as they are concerned. It would be very difficult if the term was to be used in one sense in a piece of legislation and in another sense commonly in Scots law.

Either there will have to be a much clearer definition—I know how difficult definitions are—or alternative terms will have to be found. In environmental terms, if the land is to be put to better purpose, it is important that there is some definition of what that means.

**Richard Lochhead:** We will look at the issue of further clarity. We will take into account the public interest and what is best for sustainable development—those are the ultimate tests. However, there are definitions of neglected and abandoned land; they are the simple dictionary definitions. The more you add into the bill and the more you move away from the simple dictionary definitions, the more argument there is. I will reflect on the arguments made in committee to see whether there is a need for further clarity.

**Michael Russell:** Another issue that arises—

**Alex Fergusson:** I am sorry to interrupt, but I wonder whether I could ask a quick supplementary on the issue.

**The Convener:** Yes, okay.

**Alex Fergusson:** Thank you. I will be brief.

A number of witnesses implied last week that the issue is probably more relevant, and the provisions on it would certainly be easier to implement, in urban situations than in rural situations. One even suggested that we should perhaps consider a differentiation in the provisions between urban and rural situations. Is the cabinet secretary sympathetic to at least looking at that as we proceed?

**Richard Lochhead:** I read that evidence. We have not yet reached a decision as to whether we

will address that matter. We have to reflect on what is meant.

Quite clearly, communities in the middle of a town or city are radically different to large tracts of land in rural communities. The definitions could be interpreted in different ways, for understandable reasons. There might be a few acres in the middle of a city that would appear to be neglected or abandoned, but the owner could argue that the land was not because one part of it was being looked after.

That is why we have the definition of "wholly or mainly neglected or abandoned."

That would allow the minister or the Government to look at a given situation and use sensible judgment as to whether the land really was abandoned or neglected. Looking after one hut or shed on a big bit of waste ground is not necessarily a defence against that land being neglected or abandoned—it is still neglected or abandoned. We have to be sensible about the interpretations. Circumstances are different.

**Alex Fergusson:** So you would accept that there is a differentiation between rural and urban circumstances.

**Richard Lochhead:** There is a different challenge. Measuring neglect or abandonment in a rural area is of course potentially different to measuring it in the middle of a city centre.

**Alex Fergusson:** Thank you, convener.

**Michael Russell:** Not for the first time, Alex Fergusson is right, and he has read my mind. I have nothing else to ask—I was going to make precisely that point, but he put it so much better.

**The Convener:** In that case, we will move on swiftly to the interpretation of sustainable development. The key to new part 3A of the 2003 act is the public interest and

"furthering the achievement of sustainable development".

What is the policy justification for including the double requirement for community bodies to show that they are furthering the achievement of sustainable development and for ministers to be satisfied that, if ownership were to remain in the same hands, that would be inconsistent with furthering the achievement of sustainable development in relation to the land?

**Richard Lochhead:** The thrust of our land reform legislation is to promote sustainable development. That is the motivation for intervention and, of course, the justification for it. On sustainable development, we propose to look at two factors. We have to measure whether the new ownership by the community will further sustainable development against whether leaving

the land in its current ownership would not further sustainable development.

In that sense, there is a double test, and the approach is sensible. We recognise that people are saying that that might be a step too far and might make the process slightly more difficult for communities. We will take that on board, but the approach is relatively sensible, because we have to weigh up both factors.

11:30

**The Convener:** There is now some case history for communities that have bought under the existing law. How have the public interest and sustainable development tests been assessed up to this point? Has there been more difficulty for communities?

**Richard Lochhead:** I am not sure that I understand the question. Are you asking about experience of past buy-outs?

**The Convener:** There appears to be a problem. The public interest and sustainable development have been assessed to date, which has had an impact on community right-to-buy applications that have been approved. Do you foresee any difficulties for communities in meeting the two tests in the future?

**Richard Lochhead:** We do not see significant difficulties, which is why we make the proposal in the bill. We expect a community to be able to show why taking ownership will further sustainable development, and that will be a key criterion for ministers when they decide whether to support an application proceeding. Part of the argument is about what is happening with the land or asset and what contribution it is making to sustainable development. I hope that that does not present additional difficulties.

Ministers will have to look at the situation with the asset as well as the proposals from the community, which is a sensible approach. As I said before, if that is seen as an additional obstacle or a hurdle too far, I am keen to hear views on that.

**Dave Thomson:** The double test is in proposed part 3A of the 2003 act and relates only to neglected or abandoned land. It does not relate to the wider parts 2 and 3; it relates only to the specific element where it comes in.

**Graeme Dey:** I will follow up on the cabinet secretary's point. We have received evidence that states:

"This appears a very high and most probably an impossible hurdle to be overcome and unnecessary to meet ECHR requirements".

That perhaps runs contrary to the point that the cabinet secretary made, so we would appreciate your looking at that.

**Richard Lochhead:** I repeat that I take the committee's views seriously. Such evidence is the purpose of the stage 1 investigation and evidence taking. If the committee wants to make suggestions to the Government, I will certainly consider them seriously.

On the second part of the test—whether continuing ownership under the current arrangements from the existing owner will further sustainable development—I offer the reassurance that ministers will want evidence and proof from the existing owner. If the community argues that taking over ownership will further sustainable development and seeks to buy land because of neglect or abandonment, but the existing owner argues against that and says, "No, no, I'm furthering sustainable development," the Government will ask for and demand from the owner who is trying to resist the community having the right to purchase evidence that they are taking steps to promote sustainable development.

Ministers will not just accept a reactionary statement from the existing owner to try to prevent the community from taking over land. They will want evidence that things are happening, investments are being made, a plan is in the pipeline and people have been commissioned to bring the land out of neglect or abandonment. Owners will have to provide evidence.

**The Convener:** Dave Thompson has a question. Is it about—

**Dave Thompson:** I seek just a wee bit of clarification on that point, convener.

**The Convener:** That is fair enough. After that, I will ask another question about sustainable development.

**Dave Thompson:** The cabinet secretary explained the situation, but it seems to me that the wording in the bill is the other way round. It says:

"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".

It looks as if the onus will be on the applicant to show that the current ownership would be inconsistent with sustainable development. However, you suggested a moment ago that the owner would need to show that his or her continued ownership would be consistent with that. There is a difference in emphasis that needs to be looked at.

**Richard Lochhead:** Perhaps there is, but I am making the overall point that we must look at the consequences of ownership continuing under the

existing owner rather than having the community take over the land and at what that would mean for sustainable development. I am trying to think of a practical example to illustrate my point. A community applies to purchase neglected or abandoned land and argues that such a purchase is in the interests of sustainable development and the public, which is good. If the existing owner of the land suddenly said, "Actually, last month I hired a company to come and build on the land and reinvent it," that would have to be taken into account.

The Government would of course ask for evidence—the owner would not be able to get out of the community buying the land simply by saying, "I'm going to redevelop the land and do things in the future." The Government would be strict and say that evidence is needed that that is already happening and that the land is not neglected or abandoned.

I am trying to give some comfort. We are not equipping the existing owner to get out of things easily.

**Dave Thompson:** I have one final follow-up question. Surely the additional provision is in a sense unnecessary, because an application would already have to show that the purchase furthered the achievement of sustainable development. If the owner could show that his evidenced intentions were furthering sustainable development, the community application would not have a leg to stand on anyway. I am not clear about why we need the belt-and-braces approach of having an additional provision, which might well make a purchase impossible for a community, especially if the onus is placed on the community.

**Richard Lochhead:** I take your points, and we will reflect on the matter. All that I am saying is that we should at least look at the situation of the neglected or abandoned land. If there are genuine issues, they should be part of the ministers' decision-making process.

**The Convener:** On sustainable development, has the minister reflected on the retention of sporting and mineral rights, which are guarded by the Title Conditions (Scotland) Act 2003? Communities might not be able to make the most of their assets without access to mineral or sporting rights. Would you consider, in this bill or in the proposed land reform bill, including a means to convey access to mineral and sporting rights if that was in the interests of the sustainable development of the community?

**Richard Lochhead:** That issue is clearly not just for this bill but—as you indicate—for the wider land reform debate. I will reflect on the matter. It has featured in past land reform debates, and I

would want to revisit the conclusions that were reached then, especially on mineral rights.

**The Convener:** Will your reflection take into account the fact that the island of Ireland has a very different system of mineral rights? That was set up under 19th century legislation that was passed before the Republic was set up. It was organised so that there were mineral licences rather than ownership rights over the land down to the centre of the earth. That might be well worth looking at in considering communities' ability to use their land sustainably.

**Richard Lochhead:** I will certainly commit to looking at that. There are examples in Scotland of communities owning sporting rights, albeit that your question was also on mineral rights.

**The Convener:** I move on to stage 2 amendments on crofting. Stage 2 consideration is the second part of the committee's activity on the bill and we will take evidence at that time. The Government has already made a call for evidence on the amendment of part 3 of the Land Reform (Scotland) Act 2003. From the responses to that, can you give us an early indication of the level of support for the amendments that the Government proposes?

**Richard Lochhead:** In the early days of the bill, the focus was on part 2 of the 2003 act and on the issues that we have discussed during the past hour and a half. During our discussions with stakeholders, it became clear that there was a desire to use the bill as a vehicle to address some of the crofting issues that arise under part 3 of the 2003 act. We listened to stakeholders, which is why we are proposing stage 2 amendments, particularly to try to relieve crofting communities of some of the onerous burdens of mapping for applications to purchase their estates. So far, the feedback from stakeholders has been positive; they support what we are doing. We are encouraged by that, so it remains our intention to lodge the stage 2 amendments.

**The Convener:** That is useful, because amendments to part 2 and proposed part 3A of the 2003 act would involve complex matters such as mapping, blanket registrations, reregistration and identifying landowners. All those things will require to be addressed. Can you give us an early indication of any other stage 2 amendments that might be lodged?

**Richard Lochhead:** Our officials and lawyers are working on drafting amendments. It is probably wise for me to write to the committee on that issue as soon as I can.

**The Convener:** That sounds good. Our thanks go to the cabinet secretary and his official, Dave Thomson.

We have covered a lot of ground, which will help us to produce our report. The session has been interesting. We can see that the bill is breaking new ground and provides an opportunity to give communities a better chance to succeed. We are interested in writing a report that reflects the optimism that has been apparent in most of the evidence that we have heard.

11:42

*Meeting suspended.*

11:47

*On resuming—*

## Petition

### Save Our Seals Fund (PE1519)

**The Convener:** Agenda item 3 is consideration of PE1519, by John F Robins, on behalf of the Save Our Seals Fund. The petition calls on the Scottish Parliament

“to urge the Scottish Government to stop issuing licences permitting salmon farming, salmon netting and salmon angling interests to shoot and kill seals in Scottish waters and instead require that salmon farmers either move their farms into on-shore tank systems or legally require marine salmon farmers to install and maintain the high-strength, high tension predator exclusion nets they require to meet their legal obligation under the Animal Health & Welfare (Scotland) Act 2006 to protect their stock from the attention of predators. We further ask that the Scottish Parliament ask the Scottish Government to legislate to close down all salmon netting stations in Scottish waters thus allowing tens of thousands of Atlantic Salmon and seatrout to return to their native rivers to breed.”

By the looks of it, our discussion will be a catch-all one that will cover more than just seals.

I refer members to the accompanying paper, invite comments and seek agreement on the way forward. Who wants to kick off?

**Alex Fergusson:** I am happy to comment, convener.

As members will recall, we gave the issue considerable consideration during our consideration of the Aquaculture and Fisheries (Scotland) Bill, and my recollection is that we all came to the conclusion that, although we accepted that certain concerns had been expressed about the issue, we were content that the steps being taken by aquaculture practitioners were as robust and practical as they could be and that the shooting of seals happened only in extremis. Personally, I was satisfied with that, and I am not sure that our continuing the petition will do anything to resolve the situation. In short, given our consideration of the Aquaculture and Fisheries (Scotland) Bill, I see no future in continuing the petition.

**The Convener:** Do other members wish to comment?

**Graeme Dey:** Very briefly, convener. I concur entirely with Alex Fergusson. The evidence that the petitioner gave the Public Petitions Committee, which I have read, in no way allayed my concerns about the petition. For a start, a number of what seemed to be unsubstantiated claims about the number of seals being shot were made. As a result, I tend to agree with Mr Fergusson.

**Angus MacDonald:** Given that a number of strands to the petition have, I reckon, been properly addressed, I am minded to close it. Marine Scotland has adequately or satisfactorily addressed the seal control issue, and the salmon industry is evolving, with the increased use of high-tension predator exclusion nets and the introduction and roll-out of onshore tank systems, which the committee saw when it visited Lochaber. That is another aspect of the petition, which, as I said, contains a number of strands.

The only issue raised in the petition that has not been satisfactorily addressed is that of the salmon netting stations, but the committee still has to look at that issue in light of the report of the wild fisheries review. Given that a fair bit of work has already been done on the issues, I am, as I said, minded to close the petition.

**Michael Russell:** There are two questions to address here. First of all, the law is doing everything possible to avoid the killing of seals, but is the law itself being flouted or not observed in any significant way? I do not think that the petitioner has presented any evidence that that is the case; if he has any, he should present it not only to the Parliament but to the police, because it is an offence to do what he has suggested is being done.

The second question is whether the law needs to be changed to protect seals. That is a legitimate campaign, but it is not the campaign that the petitioner seems to be pursuing. He seems to be pursuing a campaign based on the law being flouted, and if he has brought no evidence of that forward, we should just close the petition. That said, we should, as we continue with our work, bear in mind whether the law is being flouted and whether a better law can be found.

**Claudia Beamish:** I am persuaded by others' arguments that the petition should be closed. I should also point out that we will be looking at the wild fisheries review and that regulations issued under the Aquaculture and Fisheries (Scotland) Act 2013 can be amended as appropriate by ministers. I therefore see no argument for keeping the petition open.

**The Convener:** Perhaps I can sum up members' views. As we know, the national marine plan contains a section on aquaculture, which covers predators such as seals; the salmon netting issue is going to come up in secondary legislation next week; and the wild fisheries review has taken considerable evidence on the matter. All of that shows that we are taking considerable interest in the question of seals in both the natural environment and man-made structures and that we are ensuring that it is taken into account. Therefore, I recommend that we close the petition and maintain our interest in the matter, as has been suggested. Are we agreed?

*Members indicated agreement.*

**The Convener:** At the committee's next meeting, which is on 17 December, we will have an evidence-taking session on the national marine plan with Scottish Government officials. We will also consider our draft budget report to the Finance Committee and our future work programme.

With that, I ask that the public gallery be cleared.

11:54

*Meeting continued in private until 12:59.*





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