



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 2 September 2015

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
25th Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Sarah Boyack (Lothian) (Lab)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*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:

Fiona Buchanan (Scottish Government)

Andrew Campbell (Scottish Government)

Hugh Dignon (Scottish Government)

Brian Hosie (SAC Consulting Ltd)

Billy McKenzie (Scottish Government)

Dougie McLaren (Scottish Government)

Angela Morgan (Scottish Government)

Rachel Rayner (Scottish Government)

Trudi Sharp (Scottish Government)

Matt Smith (Scottish Government)

Fiona Taylor (Scottish Government)

Kate Thomson-McDermott (Scottish Government)

Mike Wijnberg (SAC Consulting Ltd)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 2 September 2015

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (Rob Gibson): Good morning, everybody, and welcome to the 25th meeting of the Rural Affairs, Climate Change and Environment Committee in 2015. I hope that everyone had an enjoyable recess. Obviously, some people have been very busy producing work on what our business will be.

I remind everyone present to switch off mobile phones, as they can affect the broadcasting system. It may be noticed that committee members are consulting tablets during the meeting. That is because we provide meeting papers in digital format.

Agenda item 1 is to decide whether to take business in private. I seek members' agreement to take item 4 in private. Are we agreed that we will do so?

Members indicated agreement.

Land Reform (Scotland) Bill: Stage 1

09:46

The Convener: Agenda item 2 is evidence on the Land Reform (Scotland) Bill from the Scottish Government bill team. We are joined by officials who have been working on the bill and we will hear from them in three panels. Panel 1 will discuss the background to the bill, developments since the land reform review group report's publication, and parts 1 to 5 of the bill. Panel 2 is here to discuss parts 6 to 9 of the bill, and we will explore part 10 of the bill with panel 3. We will have a short suspension between the second and third panels.

I welcome everyone to the meeting. Each panel will be chaired by Trudi Sharp, who is deputy director for agriculture, rural development and land reform. Kate Thomson-McDermott, Fiona Taylor, Matt Smith and Rachel Rayner have joined her on the first panel. Good morning to you all.

Do you wish to make brief comments?

Trudi Sharp (Scottish Government): I would like, if I may, to make a short introductory statement.

The Convener: Indeed. We can deal with the detail later.

Trudi Sharp: Thank you.

I thank the committee for inviting Scottish Government officials to give evidence on the Land Reform (Scotland) Bill. The bill, which is part of the 2014-15 programme for government, is the next step in the Scottish Government's ambitious land reform programme and is key to the Government's aspirations for a fairer, more equal and socially just Scotland.

As the committee is aware, the bill is the culmination of significant work in relation to land reform and agricultural holdings over the past few years. In 2012, the Scottish ministers appointed the independent land reform review group, which reported in May 2014. It made 62 wide-ranging recommendations, some of which are being taken forward in the bill, while others are being taken forward as part of a wider programme of land reform measures.

In 2013, the agricultural holdings legislation review group began an extensive review across the tenant farming sector and published its final report in January this year. The bill takes forward a number of the recommendations that it made.

We have worked closely with stakeholders in developing the bill. In December 2014, the

Scottish Government published a consultation on the future of land reform in Scotland, which received more than 1,200 responses, 84 per cent of which were from individuals. After careful consideration of the review groups' reports and a thorough analysis of the responses to the consultation, we have a bill that contains a number of wide-ranging provisions that are intended to meet the policy objectives.

First, the bill will ensure that there is an effective system of land governance and an on-going commitment to land reform by establishing a Scottish land commission that will have the commitment to publish and review every five years a land rights and responsibilities statement that sets out the Government's objectives on land reform.

Secondly, the bill will enhance sustainable development in relation to land, and it will improve the transparency and accountability of land ownership, by requiring the publication of clear guidance to landowners on engaging with communities, and by introducing a new right to buy land to further sustainable development. The bill will also give the keeper of the registers of Scotland greater powers to request and hold information on the proprietors of land and a right to request disclosure of information on those who control land, where lack of information is causing harm to communities or individuals.

Finally, the bill demonstrates a commitment to management of lands and of rights in land for the common good, by modernising and improving aspects of land ownership and rights over land, by removing the exemption for non-domestic rates for shooting and deer stalking, by strengthening existing legislation on deer management, common good and access rights and by taking forward significant recommendations on changes to agricultural holdings that were made by the agricultural holdings legislation review group.

A lot of work has gone into preparing the bill; we take this opportunity to thank for their hard work the many stakeholders who engaged in consideration of the policy.

We look forward to answering your questions.

The Convener: Thank you. The bill's provisions are extensive, as you said, and we have a limited time for questions. We want to get to the heart of some of the issues that will help the process.

We realise that you are here to tell us about the background to the bill. It seems from what we read that the bill will generate many sets of regulations. Why are many issues not set out in the bill? It is difficult for us to ascertain the import of proposed regulations in meeting the policy objectives that you talked about.

Trudi Sharp: I will ask Kate Thomson-McDermott to comment. We have also been invited to give evidence to the Delegated Powers and Law Reform Committee, which will give us an opportunity to explain those matters a little further.

Kate Thomson-McDermott (Scottish Government): As you said, convener, we are dealing with a large bill that covers a wide range of policy areas. The bill contains 43 regulation-making powers. It is often the case with bills that areas of detail that are largely administrative are left to secondary legislation; it is also quite normal for the full picture on a legislative topic to be made up of a combination of primary and secondary legislation.

About half the regulation-making powers in the bill relate to agricultural holdings, so it might help the committee to ask your third panel of witnesses about the powers in part 10.

Many of the regulation-making powers in part 5, which contains the provisions on the right to buy land to further sustainable development, replicate powers in similar legislation on the other community rights to buy.

Parliament has every right to consider where the balance should lie. We received questions from the Delegated Powers and Law Reform Committee yesterday, which we will answer over the next few days, as Trudi Sharp said.

If the committee or stakeholders raise concerns about specific areas during stage 1, we will be happy to consider their comments and in due course we will provide as detailed a response as we can provide.

The Convener: Is it your impression that more secondary legislation will be associated with this bill than was required to enact the Land Reform (Scotland) Act 2003?

Kate Thomson-McDermott: I am not completely familiar with the number of pieces of secondary legislation that were required under the 2003 act. Decisions about whether it is appropriate to make provision in regulations or in primary legislation very much depend on the detail of the policy that is being enacted. I cannot really answer your question.

The Convener: It would be interesting to make the comparison. We have also had the Agricultural Holdings (Scotland) Act 2003. We are covering both areas in one bill this time round, so the number of pieces of secondary legislation for this bill might be similar to the aggregate number for the two 2003 acts. I do not know whether anyone knows whether that is the case; it would be useful if you could tell us at some point.

Kate Thomson-McDermott: We can go away to look at that and come back to you.

The Convener: Thank you. Given that much of the bill is expected to be scrutinised and then used by communities, landlords and tenants, are you content that it is sufficiently accessible and easy to understand?

Kate Thomson-McDermott: Yes. The Scottish Government takes structure seriously and considers carefully the needs of the end user when drafting all bills. The explanatory notes and policy memorandum that accompany the bill should aid the reader in understanding the provisions in the bill and its underlying policy content. How particular sections are set out will depend on a number of factors that would be considered carefully by policy and legal officials in deciding the final format.

Further, Scottish ministers and public bodies would generally seek to aid understanding of legislation and how it operates in practice by publishing guidance once the bill has passed through Parliament and has been clarified. For instance, Revenue Scotland has guidance on the devolved taxes and the Scottish Government has published helpful guidance on the community right to buy under the Land Reform (Scotland) Act 2003.

I am more than happy to consider any concerns that the committee or stakeholders might have about any particular provisions, and we would happily consider suggested recommendations for improvement and come back with an explanation as to why things are currently structured as they are.

The Convener: Have you had any approaches by stakeholders for clarification about the meanings of any parts of the bill that we are discussing in this set of questions?

Kate Thomson-McDermott: We have, since the bill was introduced, had conversations over the summer with a number of stakeholders, and there are a number of areas in which we have sought to provide further clarification on a one-to-one basis. Once we have a clearer picture, having taken the bill through stage 1, if there is anything that we can do to produce further documents that will help with those clarifications, we will happily do so.

The Convener: Thank you.

Alex Fergusson (Galloway and West Dumfries) (Con): If I may, convener, I would like to go back briefly to make a point about regulatory powers, given the committee's scrutiny role. To my mind, it is not really the number of them that concerns me as much as what the regulatory powers are about. For instance, we are proposing that rents be based on productive capacity—we will come to rent reviews later—but we do not have that in the bill. That lack of detail will make it hard for us to scrutinise the bill properly.

The Convener: Could you give us a short list of the one-to-one pieces of clarification that you have given to stakeholders? It would be useful for us to know, before we question those stakeholders, what they were unclear about.

Kate Thomson-McDermott: I am more than happy to follow that up. Obviously, all the officials have had conversations about various parts of the bill; we can certainly follow that up in writing.

The Convener: A summary of those conversations would be most useful. Thank you for that.

We move on to questions about land rights and responsibilities from Mike Russell.

Michael Russell (Argyll and Bute) (SNP): The improvements that people want to the bill are often predicated on recommendations from the land reform review group and issues that arose in the December consultation, which appear to have changed or narrowed. I want to refer to a number of those during this meeting.

Let me start with the land rights and responsibilities statement. Almost all the people to whom I have spoken about the issue over the summer are concerned about the narrow nature of the bill's description of that statement. It is described in section 1(2) as

"a statement of the Scottish Ministers' objectives for land reform."

That is different from what the December consultation indicated and very different from what the land reform review group indicated. The land reform review group indicated that it might move towards a proper national land policy. Could you explain the changes in the drafting instructions for the bill that have led to that narrowing, and the reasons for them?

Kate Thomson-McDermott: I am happy to do that. It was certainly not intended that there would be a narrowing. The Scottish ministers' intention was that the land rights and responsibilities policy statement that was consulted on in December would be the basis for drafting of the land rights and responsibilities statement that would eventually be published under part 1 of the bill. It was not intended to be a narrowing, in that sense, and I had hoped that that was made clear in the policy memorandum, but I will take away from this discussion the point that that was perhaps not made clear in the drafting.

Michael Russell: I just want to make the point that we are working on the basis of what is in the bill, which says that the statement is

"a statement of the Scottish Ministers' objectives for land reform."

My point is about secondary legislation, but it is also about how the bill is drafted. It is really important that the matter is absolutely clear if we—rural Scotland in particular—are to have confidence in the bill. If it is not a narrowing, we need to see that on the face of the bill.

10:00

Kate Thomson-McDermott: We can certainly take that point away and I will discuss with legal colleagues whether a change needs to be made. The instructions for and the intention behind part 1, section 1 of the bill are that it would be broad enough to allow for a statement similar to the land rights and responsibilities policy statement that was consulted upon. A lot of the responses to the consultation referred to that policy statement. It attracted the highest level of response in the consultation and there was a high degree of support for it—over 80 per cent—and the comments varied from general support to some quite detailed comments. It is our intention that the policies and principles in the consultation paper, along with the detailed responses to the consultation, will be our starting point for taking the matter forward.

Michael Russell: In the discussion with lawyers and others, will you take account of a change and development that took place in the Community Empowerment (Scotland) Bill, in which there was a reference to, in essence, external validation of the points? External validation for the bill would come from the Food and Agriculture Organization of the United Nations's "Voluntary Guidelines on Responsible Governance of Tenure". That document has been endorsed by the 700 delegates from more than 133 countries. A reference to that document would widen the statement in a way that the LRRG wanted it to be widened, and it would provide the context to allow people to understand how land reform policy is set. That is the high-level statement that people are looking for. I would like it entered in the record that it might be helpful for lawyers to look at that document and for it to be brought into the discussion.

Kate Thomson-McDermott: We are happy to consider any recommendation that the committee makes. There are a number of documents, treaties and principles that encompass land reform, because it is such a broad area. In taking the bill forward, it is our intention to consult further, and thoroughly, on the scope and remit of the land rights and responsibilities statement. I am happy to take that recommendation away and consider it.

Michael Russell: I have one final point to make about the statement. Although the statement will be laid before Parliament, I believe that the intention was always that the statement would also

be debated by the Parliament. That is an issue that, in drafting terms, has become unclear. That active involvement of the Parliament with the development of the statement is something that many people will be looking for.

Kate Thomson-McDermott: My understanding is that there does not need to be anything specific in the legislation in order to allow Parliament to debate or consider the statement. However, we are happy to consider that point.

Michael Russell: That is true, in relation to permitting debate, but in order to mandate discussion it would be helpful to include that in the legislation.

Kate Thomson-McDermott: Again, we are happy to take away that recommendation and consider it further.

The Convener: Those were points well made; thank you very much.

Dave Thompson will start on the Scottish land commission.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning. The first point that I would like to raise is about the title "Scottish land commission", as proposed in the bill. We have for a while been on this journey of reform of land legislation. The commission will obviously look at various land reform issues in the future. Why has the word "reform" been dropped from the land commission's title?

Trudi Sharp: I will make some comments and then pass the question to Fiona Taylor. Essentially, the commission will now also take account of what came out of the agricultural holdings legislation review—it will now also include a tenant farming commissioner. The view is that "Scottish land commission" is a broader title than "land reform commission" and so would encompass the work of the tenant farming commissioner.

Fiona Taylor (Scottish Government): At the time of the public consultation, which was December 2014, we consulted on the notion of having a Scottish land reform commission, as it was named in the consultation document. In January 2015 we received the report from the agricultural holdings legislation review group, which recommended the establishment of the tenant farming commissioner.

Given that it is current Scottish Government policy to minimise as far as possible the establishment of public bodies, and also that both offices would be established to similar timescales, ministers took the decision to put the two commissions together so that they could share staff and resources and be efficient in that way while still having their own remits. It is considered

that the title that the body will now have—the Scottish land commission—is more suitable, given that broader remit.

Dave Thompson: I am glad that you are confident that the parts of the bill dealing with agricultural holdings will solve the problems of agricultural holdings way into the future. I have my doubts. I am sure that lots of other issues will arise, so for obvious reasons there will still be the need for reform, even in relation to agricultural holdings.

The word “reform” has significance with the general public. It indicates the Government’s willingness to continue to look for reform, because there is lots to do in general land reform and in relation to agricultural holdings. I would ask that you think about that again, because it gives a really good, powerful political message about where the Government wants to go in the future.

Fiona Taylor: I am happy to take that point away and consider it.

Trudi Sharp: The Scottish Government’s position is that this is part of the journey, but that there is a lot of work still to be done. There is a lot going on in this ambitious bill but there will be more to come. The point is whether the title of the commission reflects what we all agree needs to be done.

Dave Thompson: I have another point about the commission and its membership. The bill requires the commission to appoint people who have experience or expertise in a range of issues such as land reform, law and finance. Is that sufficiently wide, or was any consideration given to other, more specific, areas such as forestry and land management? On the face of it, the range looks relatively restrictive.

Fiona Taylor: Members of the commission will need a broad range of expertise and the bill requires the Scottish ministers to

“have regard ... to the desirability of the Commission ... having expertise ... in—

- (i) land reform,
- (ii) law,
- (iii) finance,
- (iv) economic issues,
- (v) planning and development,
- (vi) environmental issues”.

That is a non-exhaustive list. We consider that the areas and sectors that we have listed are the most relevant for the five land commissioners in taking forward their programme of work and considering the impact of law and policy on land in Scotland.

The commission will have a budget to procure advice and research externally and it will have the

ability to establish committees, so it will be able to draw on other expertise.

We gave consideration to extending the list, but where would the line be drawn in listing different sectors? We have kept the list narrow, but ministers will of course always take into account the different sectors and how they are represented within those categories.

Dave Thompson: I understand the reasoning, but I am a little concerned that people with other skills, experience and expertise might feel that they do not fit into the categories in the list and might not put themselves forward. The wording might restrict the pool of people who are available. Again, the Government needs to think a little more about that as we move on.

The Convener: There are a couple of supplementary questions.

Alex Fergusson: One of the criticisms or concerns that have been raised by a lot of people in written evidence is that there appears to be no cross-referencing in the bill to things such as the land use strategy. Is it envisaged that the commission would cross-reference its work with other areas of rural policy such as the land use strategy?

Fiona Taylor: Ultimately it will be for the land commissioners to establish their programme of work and what they wish to take forward. Kate Thomson-McDermott may have more to add on the issue of the crossover with other policy areas.

Kate Thomson-McDermott: The intention is that the land commissioners will be free to look at any policy area on land in Scotland. As such, they will be free to look at particular areas or the links between disparate areas relating to land. As Fiona Taylor stated, it would be for the land commissioners to decide how to take that on. Scottish ministers could ask them to have a look at the land use strategy, but whether they did so will ultimately be for the land commissioners to decide.

The intention in developing the land rights and responsibilities statement is that careful consideration will be given to how that statement and the objectives for land reform fit within the wider areas that are relevant to land, including development land use, biodiversity and climate change. It is hoped, through the process of developing that statement, that we will be able to consult on and develop a good, clear explanation of how those fit together. Looking at the links has been a central consideration as the bill has been developed.

Alex Fergusson: Are you saying that it is envisaged that the finalised statement will specifically refer to the land use strategy and other policy areas?

Kate Thomson-McDermott: In developing the statement, we will look closely at the links between those areas. I could not say at this time—to do so would pre-empt the consultation process—exactly what the end product will be, but that will be part of the considerations. That message came through strongly in the responses to the consultation paper, so we will certainly take it on board.

Graeme Dey (Angus South) (SNP): I noted the response to Dave Thompson's earlier point, but given the important part that forestry plays in land use and given that we have specific and important tree planting targets, surely we would want specifically to note the importance of access to forestry expertise?

Kate Thomson-McDermott: There are a number of areas across land reform-related issues where, in certain circumstances, it will be important to get expert advice. Again, Scottish ministers have taken the decision—in terms of the drafting at this stage—that the areas listed provide the overarching framework and that where specific and relevant expertise is needed it will be possible to access experts when they are required. I am happy to take back any committee and stakeholder recommendations. I am sure that Scottish ministers would be happy to consider the matter further.

Michael Russell: I will press Alex Fergusson's point, which is very important. Section 20(3) says:

"In exercising their functions the Land Commissioners must—

(a) have regard to—

(i) the land rights and responsibilities statement prepared under section 1".

It would seem to me inconceivable that the land rights and responsibilities statement would not take into account all land usage issues, because it is a high-level statement about all land issues. It is also inconceivable that the land commissioners would not have any involvement in considering that. Although I accept the commissioners' freedom to set their own work programme, under the legislation, the land commissioners will surely have to take forward the issue of land usage and all the land policy that the Government sets. That is not a misunderstanding, is it?

Kate Thomson-McDermott: That is correct.

Michael Russell: Good. That is an important point.

Dave Thompson: My final issue is on the commission's strategic plan. The bill says that the minister must sign off the plan, but there is no provision for wider consultation. Will you give us some indication of how that wider consultation, which I think would be essential, will be achieved?

Fiona Taylor: We have not legislated specifically for consultation in the bill, because our view is that it will be very much for the land commissioners to decide how to take forward their work programme. However, we fully anticipate that their approach will be open to consultation and that they will naturally consult stakeholders when devising their work programme and strategic plan. Therefore, we do not consider that we need to expressly say that in the bill.

Dave Thompson: You do not think that there should be a duty to consult widely? If that duty is not there, there will be nothing to prevent the commissioners from producing their plan from within a very restricted pool of people and organisations and then bunging it over to the minister. If there was such a duty, which would be simple to insert into the bill, at least we would be sure that they would consult. As commissioners, they could decide not to do that.

Fiona Taylor: Indeed they could, but their reports and recommendations must be seen to be credible, and it is good stakeholder engagement that will ultimately make the product credible. Scottish ministers and, indeed, the Scottish Parliament would want that to be taken forward. The Scottish Government is very open to consultation, and we think that consultation is very much the direction of travel for the land commissioners and what they will want to do in taking forward their work.

10:15

Dave Thompson: Times change, views change, political parties change and Governments change. If there is no requirement to consult, we might have a Government and a commission 10 or 20 years down the line that do not really want to consult. Would the bill not be a bit stronger if it included a duty to consult?

Fiona Taylor: We will give some consideration to that.

The Convener: Thank you. Part 3 of the bill is on the transparency of land ownership in Scotland. Sarah Boyack will lead with questions on that, and I suspect that other members will have questions on it, too.

Sarah Boyack (Lothian) (Lab): Thank you, convener, and I welcome the panel to the meeting.

My questions are in two categories, the first of which is about the background underpinning the drafting of part 3 on the transparency of land ownership in Scotland. Given some of the questions in the written submissions that we have received, I want to tease out the background to the definitions that are used in the bill so that we can understand the choices in its final drafting.

My first question is a technical one about whether the definition of land includes buildings. If the principle is that there should be greater transparency about land ownership, why should knowledge of who owns land be restricted? I am particularly interested in the logic behind the decision not to make it incompetent for non-European Union-registered entities to register title in Scotland. I read the justification for that, which seems to suggest that, because trusts could own land, making it incompetent would hinder traceability and accountability. However, surely if companies had to be EU registered that would enable transparency and provide a paper trail.

Following on from that, does the Scottish Government recognise that title to 750,000 acres of land in Scotland is held in tax havens? I am very keen to explore some of the technicalities around the choices that were made in drafting the bill, which seem to cut across the ambition to map ownership that everybody has signed up to. That seems to be quite a big loophole in the bill, and I am interested in the technical reasons behind that choice.

That was my first set of questions, convener.

The Convener: Okay. Let us take it bit by bit. Who will start?

Trudi Sharp: I would like to take those questions one by one, if that is okay.

The Convener: That would be helpful.

Trudi Sharp: We can start with the question about whether the definition of land includes buildings.

Rachel Rayner (Scottish Government): Yes, the definition would include the buildings on the land.

Trudi Sharp: The second question was about whether the Scottish Government considers it to be in the public interest that people should have knowledge about who owns land. I will pass that over to Matt Smith, who can give some of the background.

Matt Smith (Scottish Government): Good morning, committee. Obviously, one of the things that the Scottish Government is bringing forward in conjunction with Registers of Scotland is the commitment to complete the land register within 10 years. That is a big job, which Registers of Scotland is now taking forward. It is a commitment to increase the traceability of land and to ensure that all legal owners are represented in the land register and that all the land of Scotland is mapped within the land register. That is a big step in increasing the traceability of land ownership in Scotland, because some land is currently recorded in the general register of sasines and it would be difficult to interpret that without the required

knowledge. The land register is a lot more modern, it is map based and it is easy to interpret.

Registers of Scotland is also leading on a task force for a new land information system for Scotland. The idea is to have a Scottish land information system that would be electronically available. Again, that would increase accessibility to information about land ownership in Scotland. Rather than having to go through Registers of Scotland, people would be able to carry out online searches. Again, that is part of the general picture on increasing information about land ownership.

Ms Boyack referred to the EU entities proposal in the consultation that was made by the land reform review group. The Scottish Government recognises that, when it comes to landowners in Scotland, there is a desire for greater transparency, accountability and traceability. When we looked further into that proposal after the consultation, it became apparent that it would not necessarily provide the accountability and traceability that were desired.

Ms Boyack mentioned trusts, which can be used to obscure the ownership of land. The proposal would not deal with the complex corporate structures that can be used to hide the ownership of land and there are other areas that it would not deal with so, on the whole, we did not think that it would meet the policy objective of increasing traceability. Sections 35 and 36 contain regulation-making powers that we feel will provide traceability when it is required.

Sarah Boyack: I still do not get a sense of why it would not be legitimate to ask those questions. We totally understand that corporations and corporate structures exist, but there is an issue about being transparent about the ownership of land. You said that there were other areas that led you down the path that you have chosen. I would be interested in knowing what those were. Perhaps you could provide supplementary information on that if you do not have it at your fingertips.

Matt Smith: We would be more than happy to provide you with further information.

Sarah Boyack: Do you recognise the statistic that 750,000 acres of land in Scotland are held in tax havens?

Matt Smith: I do not know whether that figure is correct; I am not sure whether that could be established. We could take that away and look into it. I do not have the answer.

Sarah Boyack: That would be great, because how much land is held in tax havens goes to the heart of the issues of accountability and transparency.

My second questions are about how, practically, people might use section 35. I also want to explore the role of the keeper. The issue comes down to the principle of transparency as an objective. You rightly mentioned the land registration process that will take place over the next decade. If we agree that it is a good thing to have transparency, as the Scottish Government has suggested, why should information on who owns land be released only if the reason that is given for a request meets certain criteria? We have received a representation that requests should be limited to those that are made on "legitimate and reasonable grounds". What is the Scottish Government's view on that? On what grounds will it be possible to make requests? How will that be specified? What role will the keeper play in determining whether someone will be able to find out that information? Will it be necessary to have particular interests or will any citizen in Scotland be able to ask that question?

Matt Smith: As far as the regulations that will be made under section 35 are concerned, I clarify that no decision has yet been made on who the "request authority" that is referred to in section 35 will be. That will be set out in the regulations when they are made.

Section 35 really relates to requests for information by an individual, a community or a company that has an issue connected with an area of land. For example, the way in which the land is being managed might be causing flooding or access issues. It might simply be the case that the fences on a farm or an area of ground that is in stock are not being properly maintained, which is resulting in trespass on to other land.

The provisions on access to information are intended for situations in which the management or use of an area of land is having an effect on, say, a neighbour who has tried to have the issue addressed. They have gone through the land register or the register of sasines to trace the legal owner, but the legal owner is not responding. The legal owner might be a company that is in an offshore tax haven and there might be a person who sits behind that company or trust who has the decision-making power over how the land is being managed, which is causing harm to the individual concerned. I hope that that answers your question.

Sarah Boyack: Yes. Just to clarify, general, in-principle knowledge—for example, who owns land or the different categories of who owns land—will not be covered automatically by the bill.

Matt Smith: Section 36 includes the power for the keeper to request information, which would include the power to request information about the categories. Sections 35 and 36 are quite separate—section 36 allows the category of land to be provided. That information could then be

added to the register. When an application for registration is being made, section 36 also allows for the provision of further information about persons who may have control over the proprietor. There is a mixture of powers, but section 35 applies where there is a particular issue that really needs to be addressed.

Kate Thomson-McDermott: The issue is very complex, and in talking about information about who owns land in Scotland, people sometimes mean different things. The Scottish ministers are completely committed to there being a complete register of all legal ownership of land in Scotland. We are not saying for a second that it is not in the public interest for people to know who the legal owners of land are. People can already access that information through a request to the keeper of the registers of Scotland. The information is available from the land register or from the general register of sasines.

Through completion of the land register, knowledge about legal ownership will be much clearer and much more easily accessible but information about legal ownership will be fully publicly available. It is available at the moment, and the intention is to improve access to it.

As regards the EU entities and sections 35 and 36, we are talking about what information should be available to the public above and beyond information on legal ownership. In that case, it is about looking at the information that we are talking about, whether it is about some kind of controlling or beneficial interest over land or details about the legal proprietor above and beyond what they would be required to disclose in order to register their land. We have to look carefully at what that information would be used for, why people would need it, and what the most appropriate and balanced way of gaining access to that information would be, while considering the interests of all the parties involved.

We believe that the provisions we have put forward in the bill, together with completion of the land register and the information property service, will provide the best balance in getting the information that is necessary without having an unjustified interference in the interests of landowners and others.

Sarah Boyack: Thank you. I think that that is enough for me. I am sure that colleagues want to ask other questions.

The Convener: We do indeed. What account have you taken of the fourth anti-money laundering directive that has been passed and the moves in London to have a bill that will expose who company owners actually are? Is that ambition met by the terms in which you have described access to information? Knowing who

owns the land has to include the beneficial owners. It has to get back to that point for people to know who actually owns the land. It does not seem to me that how the bill has been written gets us to that point. In constructing the bill in its present form, have you taken that point into account? People want to know who the beneficial owners of land are. I do not believe that you have told us that in your answers.

Kate Thomson-McDermott: We have fully taken into consideration the EU context in this regard. The fourth anti-money laundering directive and the Small Business, Enterprise and Employment Act 2015 look at issues of money laundering and tax evasion. For those reasons, both the EU and the United Kingdom have decided that there are very strong reasons for requiring the disclosure of what are referred to as controlling interests in the act and as beneficial interests in the anti-money laundering directive. We have fully taken into consideration those issues.

What the Scottish ministers need to consider in the context of land reform in Scotland is the basis and rationale for that information being necessary in order to further land reform in Scotland. Those are the considerations that we have taken into account.

The Small Business, Enterprise and Employment Act 2015 will, in some circumstances, help to increase the transparency of land ownership in Scotland in that, if a UK company holds land, that information might be available. It is not quite so straightforward with the EU's fourth anti-money laundering directive because, although the information is required to be held under the directive, it depends on the implementation in the specific countries. As I understand it, there is no requirement in the directive for the information to be made public.

10:30

The Convener: Indeed. The Scottish Affairs Committee in London identified the fact that, if trusts were to be exposed, it would take

"a fundamental change in UK law".

Those are the Scottish Affairs Committee's own words. Sarah Boyack pointed out that probably 750,000 acres of land in Scotland is held in tax havens, but you have not answered our questions about whether that has been taken into account in the drafting of the bill.

Kate Thomson-McDermott: Whether land is held in offshore tax havens has of course been taken into consideration. We have developed proposals that we think are balanced and appropriate in the circumstances, but I am happy

to take away all of the committee's comments and the Scottish ministers will be happy to consider them further.

The Convener: Do you recognise the estimate of 750,000 acres held in trusts?

Kate Thomson-McDermott: As Matt Smith mentioned, it could be difficult to clarify that from the information that is currently held, but I could not answer the question without referring to colleagues at the Registers of Scotland, which holds the records. We will also take that point away and respond to the committee in writing on it.

Michael Russell: It is clear that heavy weather is being made of the point. It is absolutely clear from the representations that the committee has received and the debate on the matter that the majority of people in Scotland thought that the original proposal in the consultation—that there should be a democratic duty to disclose information—was right and that it was undesirable for land to be held outside the EU in trusts.

To that extent, little has changed in Scotland since the 19th century. "Is treasa tuath na tighearna"—the people are mightier than a lord—which was the slogan of the Highland Land League, still applies. It is a touchstone of land reform—it is where we will end up—so it is very important that, as the drafting continues for amendment, the Government considers the matter. Knowledge of who owns land is vital not only for individuals who are affected by a fence or a piece of plantation but for a community and a country. That needs to be recognised in the bill. The principle was accepted in the consultation. It needs to be thought about again and, if there are issues with the position that, for example, the UK Government or the Advocate General might take, it should be remembered that the people are mightier than a lord.

The Convener: It is appropriate that you ask the question on engaging communities in decisions relating to land, Mr Russell, because it applies directly to that.

Michael Russell: Part 4, which has been a little neglected in discussion of the bill, is central to what the bill is about. I praise the policy memorandum, because there was some sensible information in it about exactly what part 4 is about. If consultation should take place, as I think we all accept it should, it must be about more than telling. However, the words of the bill are really just about telling. They are about making sure that the community has been told what the landowner is going to do.

I could take the witnesses to communities in my constituency where consultation is about telling—where, when decisions are made about what will

happen on the land, people have a public meeting and say, "This is what we are going to do"—so it is important that we understand the policy intention of part 4 and how it will be implemented. The four subsections in section 37 are added to by the policy memorandum.

I ask the witnesses to address what the consequences would be if landowners did not consult. How would it affect charities—it is clear in terms of the Office of the Scottish Charities Regulator—and, more importantly, private landowners?

How do the provisions apply to people who want to own land? That is not addressed in the bill and we need to think about it. I could take you to somewhere where somebody has bought 12.7 square miles within the past three years without any consultation about what they are going to do with the land—they have already made the decision about what they are going to do with the land. That seems to be contrary to the spirit of the bill. How can the provisions operate in relation to existing landlords? In particular, how can they operate in relation to people who might intend to be landlords?

Kate Thomson-McDermott: I will address those three issues in turn. The Scottish ministers' intention is that guidance under section 37 will be about engaging communities, and engagement goes a lot further than consultation. Consultation is only one form of engagement. Although drafted for very different reasons and set out for the public sector, the national standards for community engagement provide a useful model that can be adapted and clearly explained that engagement is very much dependent on the circumstances and the case or issue in point. There is a range of what would be considered engagement and what would be considered appropriate depending on the circumstances. If someone were required to do something under environmental legislation and they did not have a choice in the matter, the appropriate level of engagement would perhaps be to inform communities of what was being done and why. If there were a range of options for taking forward the work, they would potentially consult by going out and saying, "This needs to be done, but here are the options. What are your views?" and those views would be taken into consideration. Engagement could go all the way to co-production, whereby people would be asked, "We think that we want to achieve a certain outcome. Do you agree with this outcome? How can you work with us to design the best way of achieving the outcome?"

The guidance will set out clearly what is meant by engagement and will set out the broad parameters while stressing that what is appropriate will depend very much on the

circumstances. It is certainly not just about consultation; a broad range of things is meant by engagement. We hope that, as we go through the process, we will use the national standards as a helpful guide to translate engagement into the more specific context of landowners and communities.

I stress that there is now a recognition among many landowners that there are considerable benefits to working with their local communities, and many productive partnerships are already springing up around Scotland. Organisations such as Scottish Land & Estates are very supportive of the proposal and are keen to work with us and the landowners that they represent to take matters forward. The intention is that the Scottish ministers will work closely with stakeholders across the public, private, third and community sectors to develop and promote the guidance to ensure that there is collective buy-in and that there is good promotion of the importance of engagement as the guidance is developed.

Where, despite the guidance, landowners did not wish to or did not engage with communities on land-based decisions, that could result in poorer outcomes for both landowners and communities as well as poorer relationships. The disadvantages of that will also be made clear. For all landowners, including private landowners, a lack of consideration of the guidance and a lack of engagement could be factors that the Scottish ministers would consider as part of the evidence provided by a community body to support an application for the right to buy land to further sustainable development, as such things may assist in evidencing why the transfer of land to the community body or nominated third party would be the only way of achieving the desired benefit for the community. Those would obviously be factors to be taken into consideration.

The Scottish ministers are also exploring ways in which a failure to engage with communities on land-based decisions might be taken into account in future decisions on the award of discretionary grants in relation to land. As you have noted, the issue for charities is slightly different, as OSCR currently has powers under the Charities and Trustee Investment (Scotland) Act 2005 whereby, if a charity trustee does not comply with the terms of the guidance issued by the Scottish ministers, OSCR is able to consider whether the charity trustee has complied with their duties under the 2005 act. If they have not, action may be taken for misconduct. There are a range of ways in which failure to consider or comply with the guidance would be taken into consideration.

Michael Russell: That is very important. Hugh Dignon, who is sitting behind you, has struggled with the issue in relation to wildlife crime. Cross-

compliance is extremely important in ensuring that landowners are not rewarded if they are not prepared to operate in a sensible manner.

Kate Thomson-McDermott: That is one of the things that will be carefully considered as guidance is developed.

Your third point was about the impact on future landowners, although the provisions would apply to existing landowners. When the guidance has been developed and is in place, what is expected of landowners in Scotland will be very clear. Anyone who is considering purchasing land in Scotland, if they have good agents, will be made aware of the guidance and what is expected, and we certainly hope that the need to engage with and consider the needs of communities will be a factor in their consideration.

Michael Russell: If cross-compliance becomes an issue, consideration should at least be given—and perhaps you will be good enough to think about this in drafting terms—to making compliance an element in the conditions of purchase of land. In other words, people would not have access to forestry grants, Scotland rural development programme grants or any other grant if they did not adhere to the code.

Alex Fergusson: I know that there is concern in the farming community, because the issue has been raised with me in my constituency, that the approach might impact on everyday farm management decisions. Will that be the case?

Kate Thomson-McDermott: Again, I hope that the guidance will clearly set out what is expected and what constitutes a proportionate and reasonable level of engagement in day-to-day circumstances. If farmers' day-to-day decisions are having a significant impact on the communities around them, I imagine that there will be an expectation that they will discuss the issue with communities. This is certainly not a mandate for communities to tell farmers what to do; it is very much about consulting communities when decisions are likely to have an impact on them, and considering their responses.

Alex Fergusson: I will leave it at that. I am sure that we will come back to the issue.

Graeme Dey: This might be a difficult question to answer. When will the guidance be available, even in draft, for the committee or stakeholders to see? I am concerned that it would be inappropriate for us not to see it during our scrutiny of the bill—or to see it only towards the end of the process. This is a hugely important bill. It is not good enough to say, "Oh, that'll be taken care of in guidance," if people cannot at least get a feel for what the guidance will say as they consider the bill.

Kate Thomson-McDermott: The Scottish ministers' intention is to develop and draft the guidance in consultation with stakeholders, taking as co-productive an approach as possible. If that happens, the process will likely commence after the bill has been taken through the Parliament. However, I can take away the committee's concerns.

Graeme Dey: I accept that there is a huge logistical challenge in that regard, but we need more meat on the bones in relation to what the guidance might say.

Kate Thomson-McDermott: We tried to put more information about that in the policy memorandum. I do not want to pre-empt the process of producing the guidance in consultation with all the stakeholders who will have an interest in it, but I am sure that the minister will be content to consider what further information could be provided to the committee at this stage.

Graeme Dey: We can explore that with the minister.

The Convener: We move on to the right to buy land to further sustainable development.

Claudia Beamish (South Scotland) (Lab): Convener, with your forbearance, I want to ask for clarification. Could the committee have something in writing in response to question 4 in our paper, on non-EU-registered entities, and the extent to which partiality fed into the decision on whether the matter would be in the bill? It would help us if the team could furnish the committee with that information.

Matt Smith: Sorry, will you clarify what you meant by "partiality"?

Claudia Beamish: I understood that, if there was to be any value in making provision in the bill in relation to non-EU-registered entities, it would be only partial—correct me if I am wrong. With the committee's agreement, I would like to see the evidence that it is not appropriate for the Scottish Government to take the issue forward in the bill. If I have misunderstood the position, I apologise.

Trudi Sharp: We can send the committee our analysis of the proposal around non-EU ownership and exclusion, to explain our thinking and the evidence that we have.

Claudia Beamish: That would be helpful. Thank you.

The Convener: Can we move on to the question in hand?

10:45

Claudia Beamish: In relation to sustainable development and the community right to buy more

generally, will you explain why it is considered that an additional community right-to-buy procedure is necessary? That is a neutral question. How will all the various right-to-buy mechanisms relate to one another? I see that there is also an issue around a possible third-party right to buy, which is a new suggestion. Will you comment on those things? If you cannot do that today, perhaps you could write to the committee.

Kate Thomson-McDermott: I am happy to answer that question. There are a number of crucial distinctions between the existing community rights to buy and the proposal in the bill. The right in part 5 is a right to buy even where there is an unwilling seller. It is unlike the pre-emptive community right to buy in part 2 of the Land Reform (Scotland) Act 2003 but similar to the part 3 crofting right to buy and the new part 3A right to buy abandoned, neglected or detrimental land.

The key test in the new part 3A right to buy that was introduced in the Community Empowerment (Scotland) Act 2015 is whether the land is

“abandoned or neglected, or ... the use or management of the land is such that it ... causes harm ... to the environmental wellbeing of a ... community.”

The key test is about the condition and use of the land rather than the needs of the community. There were strong messages during the passage of the Community Empowerment (Scotland) Bill that, although the right was much welcomed, there may still be circumstances where communities require access to land in order to meet their needs but that would not be covered by the existing rights to buy or part 3A. Therefore, the key tests for the right to buy land to further sustainable development in part 5 focus on the outcomes for the community rather than on the condition of the land.

As you mentioned, there are some specific differences. In part 5, on the right to buy land to further sustainable development, the community can nominate a third-party purchaser, who could be, for example, a housing association or a local business partner, to buy the land and so help to deliver the benefits to the community. The benefit of that arrangement is that third parties might have access to resources and skills that would otherwise be unavailable to the community.

The Scottish ministers, in considering the application, will have to be satisfied that the test for consenting to the application will still be met in full, so they may expect communities and third-party partners to agree legal arrangements—for example, setting out delivery timescales, rights, liabilities and maintenance. However, this is viewed as a significant benefit of the part 5 proposals.

Rachel Rayner: The process is similar to the existing rights to buy, so in that sense they fit together. We are not expecting community bodies to have to deal with different procedures and processes with different rights to buy.

Claudia Beamish: That is reassuring. It is exceptionally important for communities to have simplicity if the bill is to become an act that will work, but that is just a personal view.

I have three other questions on sustainable development. That term is fundamental to the working of the bill. I know from previous experience of other bills that this is a knotty problem, but what definition of sustainable development will the Scottish Government use for this purpose? I ask that because I would like to understand how the bill is going to work in view of the points that have been made about regulation and secondary legislation. Why is the definition not in the bill?

Kate Thomson-McDermott: The reason is that the Scottish ministers do not consider it necessary to define sustainable development as its meaning is generally well understood and it is widely used in legislation. From the Scottish ministers' point of view, it is quite acceptable in drafting terms to leave sustainable development as undefined. There are examples in other legislation such as section 3E of the Town and Country Planning (Scotland) Act 1997 and in the other rights to buy, such as in section 97H(1)(b)(ii) of the 2003 act.

Not providing a specific definition means that sustainable development is deliberately left broad and the Scottish ministers and, where necessary, courts will be able to determine what sustainable development means in a particular case, as they have done in relation to other legislation. There is a helpful quote from the Pairc judgment, which is not too long, if you do not mind me referring to it. The Lord President said:

“In my view, the expression sustainable development is in common parlance in matters relating to the use and development of land. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court.”

A general explanation of what is meant by sustainable development is set out on page 26 of the policy memorandum accompanying the bill. It says:

“Sustainable development is defined as development that is planned with appropriate regard for its longer term consequences, and is geared towards assisting social and economic advancement that can lead to further opportunities and a higher quality of life for people whilst protecting the environment. Sustainable development requires an integrated approach to social, economic and environmental outcomes.

Sustainable communities are more self-reliant, with increasing economic independence and a better quality of

life, while conserving or enhancing their environment. Contrasted with unsustainable communities, where populations are declining, local economic and social activity is inhibited and the natural heritage is damaged."

Rachel Rayner: I should also add that sustainable development is only one of the key tests that must be met; the others are set out in section 47(2). The issue should not be looked at in isolation.

Claudia Beamish: I understand your argument, but having in the past looked at the issue more than I would have even chosen to, I think that there is a tension between having a definition that is broad enough to allow things to be taken forward in an inclusive way and having a definition that carries the risk of legal challenge. To be frank, the Scottish Government has in some instances and in some legislation shied away from using the term "sustainable development". Having gone through the Aquaculture and Fisheries (Scotland) Bill and other bills, I judge that there is definitely a sense that the term is difficult to define, and I am therefore concerned about the matter being left open. I realise that the term is mentioned in the policy memorandum—I thank you for reading out that passage—but I must highlight the issue, because it still needs a considerable amount of thought.

In considering how the terms "significant benefit" and "significant harm" are to be interpreted, will any consideration be given to the impact on the landowner? Does that comply with article 1 of protocol 1 to the European convention on human rights, as is asserted in paragraph 201 of the policy memorandum?

Kate Thomson-McDermott: As my colleague Rachel Rayner has mentioned, the tests for ministers in deciding on an application are set out in section 47 of the bill. Under the tests, what are termed the sustainable development conditions have a number of limbs, two of which specifically relate to significant benefit or significant harm to the community. In interpreting what those benefits or harms would be, ministers will have to consider other issues that are set out in section 47(10).

As for consideration of the impacts and benefits on landowners, I should say first that, in developing the provisions, the Scottish ministers have been careful to consider the rights and interests of all persons who might be affected, in order to develop balanced and fair tests and a balanced and fair process. Scottish ministers believe that that is what is set out in part 5.

Landowners' rights and the potential benefits and harms to them will be considered, and those rights will be protected in a number of ways throughout the right-to-buy process. For example, the community body is required to have written to the landowner at least six months prior to the

application to ask them to transfer the land, in order to give fair notice and encourage co-operation and engagement before entering into the process. Landowners have the right to and indeed will be invited to make representations at various points in the process so that they can clearly explain to the Scottish ministers their rationales, their reasonings and the potential impacts on them.

Moreover, as we have discussed, certain strict tests have to be met before the Scottish ministers will consent to an application. They include considering whether consenting to the application would be in the public interest, which requires detailed consideration of the impact on all the persons affected by the transfer, including the landowner. If the Scottish ministers consent to the application, the landowner will receive market value for the land; in certain circumstances, landowners might be able to claim for losses and costs associated with the transfer, and they will also have a right of appeal against the Scottish ministers' decision and the valuation.

The principle of encouraging collaboration runs right through the right to buy. To aid collaboration, provision is made for mediation between communities, landowners and other parties in relation to the proposed exercise of the right to buy.

Ministers will have to ensure that their decision on a right-to-buy application is compatible with article 1 of protocol 1 to the European convention on human rights. Part of that test will require ministers to be satisfied that, on a fair balance, the benefits that will result from the transfer of land outweigh the interference with the landowner's rights under article 1 of protocol 1.

Claudia Beamish: It is important to have that clarification in view of the bill's principles and our desire to take forward, where appropriate, more community ownership of land in Scotland.

The Convener: There are a couple of supplementaries.

Alex Fergusson: I am fairly stunned by Kate Thomson-McDermott's statement that the Scottish ministers do not think that it is necessary to define sustainable development. I say that because the land-managing fraternity—if I can call it that—has already expressed a great deal of concern about the relevant provisions. Every time the issue has been raised, those people have always been told by Scottish ministers that good landowners, good land managers and good farmers will have nothing to fear, but I think that the bill will give them something to fear.

I accept that criteria under section 47 will have to be satisfied if an application to buy is to go ahead, but not one of those refers to the impact on

the land. The best farmer in the parish could make his submissions and make his argument about the impact, to make his case for retaining the land that is being sought, and yet if the application fulfilled those four criteria, the community would succeed in getting the land transferred under a definition of sustainable development that seems to have been deliberately left broad, to quote Kate Thomson-McDermott's words.

I do not see how those two aspects tie up to give any founding to the statement that good farmers have nothing to fear from the bill. It seems to shift the balance away from the equitable balance that should predominate, particularly when there is third-party involvement. I am sure that we will pursue the issue another time, but I wanted to put that on the record now.

Kate Thomson-McDermott: I should mention in response to that point that one of the criteria is consideration of the public interest. In considering that, the Scottish ministers would have to take broad consideration of a range of issues, such as the importance of the agricultural sector and industry and of using agricultural land for such purposes. Those things would be considered in that test.

Michael Russell: Paragraphs 203 to 205 of the policy memorandum anticipate the possibility of local authorities being affected by such applications. For clarity, does that mean that, when a community finds that a local authority's ownership of land is impeding its ability to operate, so that it is suffering significant harm, it could use the bill rather than the Community Empowerment (Scotland) Act 2015? Am I right about that?

Kate Thomson-McDermott: Local authority land is not precluded from consideration under part 5 of the bill. One thing that the Scottish ministers will have to consider is the guidance that is necessary to support communities' decisions on which route to go down. The community empowerment provisions on public sector asset transfer are expected to be more appropriate, but provisions in part 5 of the bill might also apply.

Michael Russell: A community body might apply under the provisions in part 5 for the right to buy land owned by the local authority in circumstances in which the community's health is in effect impaired by the local authority's ownership of the land.

Kate Thomson-McDermott *indicated agreement.*

Graeme Dey: I will cite a specific case that has been raised with me as an example that might clarify our discussion of the community right to buy. If a farmer has a small field in which he regularly grows crops, but the local community wants that field to establish a community

woodland, is it feasible that the community could acquire that land under the bill?

Trudi Sharp: I would like to remind the committee of the broad context. We are talking about cases in which there is significant harm that is likely to affect the community. It is not a broad and general right; it applies in specific instances.

Graeme Dey: So the example that I gave would not happen.

11:00

Kate Thomson-McDermott: It is not possible to comment on a hypothetical case, even with the detail that you have provided. The decisions would be made case by case. As Trudi Sharp pointed out and Rachel Rayner mentioned earlier in relation to the tests, the community would have to put forward a strong application that showed the significant benefit that would be delivered and identified the harm that would be caused to the community if the application were not taken forward.

The Scottish ministers would have to consider carefully the impact on the farmer. If losing that field were to have a significant impact on the farmer's business, that would weigh quite heavily in the consideration. That would be about balancing the impacts on all parties and considering those in reaching a decision. I cannot give a yes or no.

Graeme Dey: The answer that you have given is that, in principle, it could happen.

Kate Thomson-McDermott: In principle, an application could be made on that basis. I could not say what the decision would be likely to be.

Graeme Dey: I accept that, but there is scope for the right.

Kate Thomson-McDermott: Yes.

The Convener: Thank you for that debate. There is a final point for this panel.

Claudia Beamish: In the context of the four tests, was consideration given to providing for a power of direct ministerial intervention to buy land to further sustainable development if there is no community present?

Kate Thomson-McDermott: Consideration was given to a wide range of powers to enforce changes in control over land, such as through enforced leasing, but the key consideration was to minimise Government intervention to what is necessary to achieve the overall aims. In this context, what was looked at in the bill was encouraging better engagement and having the possibility of transfer under part 5 should no voluntary route succeed. The focus of the

provisions in the bill is on the relationships between communities and landowners, on making sure that the balance is right and on overcoming barriers that communities face in the circumstances that apply under part 5.

As part of the bill, there has been no detailed consideration of the intervention powers that some stakeholders have talked about for where there are no existing communities. That has not been considered as part of the bill, although it might be considered in the wider land reform agenda.

Claudia Beamish: Would you see that as something that it is appropriate to look at, in view of the fact that it may well have a resonance for the future of our land in Scotland?

Kate Thomson-McDermott: The Scottish ministers are considering closely all the land reform review group's recommendations and will consider all the evidence that is put to the Parliament and the committee at stage 1.

The Convener: I thank our witnesses on parts 1 to 5.

We will change over rapidly, as we have to fit in a programme that allows us to finish before Parliament starts at 2 o'clock. The next couple of teams will have to be succinct in their answers, as will the members in their questions. We have a large agenda to cover after this item. We will have a break after the next panel, but we must press on.

Thank you for the rapid turnaround for the second panel. Joining Trudi Sharp are Dougie McLaren, Brian Peddie, Hugh Dignon and Helen Jones. I invite Graeme Dey to begin the questions for panel 2.

Graeme Dey: Thank you, convener—I am conscious of the time. Why does the bill seek to remove the business rates exemption for shootings but not for fishing, farming and forestry?

Trudi Sharp: I ask Dougie McLaren to answer that question.

Dougie McLaren (Scottish Government): Those are separate land occupations that all have separate exemptions in legislation. Ministers are looking separately at fishings under the wild fisheries review, which is on-going. Some fishings are on the valuation roll because, if the district salmon fishery board asks the assessor to make an entry, an entry can be made and used for the fisheries assessment levy. However, that is not used for rates, so fishings are not rateable.

Agriculture and forestry are different land occupations from shooting and deerstalking and ministers are content to continue the exemption for those activities, which they think is sustainable and in line with their policy priorities for agriculture

and forestry. Of all the sectors that the Scottish Government promotes, only very few get targeted rating concessions. Ministers are content that those for agriculture and forestry are sustainable and in line with their policies, and they have no plans to end those exemptions.

Graeme Dey: What analysis has been carried out of the impact that ending the current exemption would have on rural jobs and rural businesses and of the potential knock-on effects that it could have on school rolls and the viability of rural schools, which are issues that have been raised with me?

Dougie McLaren: We have used the information that we have. Shootings and deer forests have not been on the valuation rolls for the past 20 years because of the exemption, so part of the evidence base is missing. The tax base has not been quantified and, without that information, it is hard to model the impact and implications. We know from what UK ministers said 20 years ago that sporting rates generated around £2 million-worth of rates revenue. We have projected that forward in line with the overall rates revenue in Scotland over the period to estimate the future income, which is, of course, subject to rates relief.

We can do only so much. We have had a lot of evidence and information from stakeholders, who have helpfully tried to quantify the impacts but, until we get the valuation of the tax base from the assessors, we cannot accurately model the impacts and implications. Even if we tried to do so and put out our own estimate of the tax base, that could be highly problematic once the assessors started to do their formal, statutory valuation, if the two figures differed. We have set out the information that we know and the basis on which we have made the proposal but, without the 20 years' worth of valuations, we can do only so much.

Graeme Dey: Do you accept that the removal of the exemption could have a negative impact?

Dougie McLaren: We recognise that taxes have impacts on taxpayers—that generally accepted point is definitely not lost on us. We think through what the impacts of what we propose might look like. The premise of valuation for rates is that the assessors hypothesise the rental value that a property would have. That valuation is then taxed at the poundage rate that the Scottish ministers apply. There are different elements to that.

Graeme Dey: I want to ask a series of questions, which might lead to supplementaries from colleagues.

The Convener: Members already have some.

Graeme Dey: It has been suggested to the committee that collecting the tax might be difficult. How do you respond to that assertion?

Dougie McLaren: I am not sure in what way the rates would be difficult to collect. Local authorities have rating departments and a statutory duty to levy and collect rates. They would make up their assessment rolls on the basis of what the assessors put on the valuation rolls and would issue rates bills to the properties concerned and enforce that as normal.

Graeme Dey: I apologise—I used the wrong word. It has been suggested that the tax would be uneconomic to collect if the logistics of collecting it were set against the amount that you might end up with.

Dougie McLaren: Collection will involve extra work for local authorities. The cost of collecting all rates is estimated to be just over £6 million, compared with a rates income of approaching £2.5 billion. Some might say that the cost of collection is therefore quite low. We have had no direct evidence from local authorities about what the incremental cost of collecting the rates in question would be, but we consider it to be sustainable.

Graeme Dey: How much—net of any relief—do you estimate the move will raise? On what basis will relief be granted?

Dougie McLaren: We do not know what the net revenue will be because, as I said, that will depend on the valuations, their spread and how they are captured by the rating relief thresholds. Our best estimate is about £4 million, subject to rates relief.

Graeme Dey: On what basis will the relief be granted?

Dougie McLaren: The same eligibility criteria for all prevailing rates relief for all ratepayers will apply. For example, the small business bonus has thresholds of rateable value under which different property bands get different relief rates. Subject to the relevant legislation continuing—the small business bonus scheme legislation will expire at the end of this year and the scheme will need to be relegislated for—

Graeme Dey: Yesterday, it was flagged up that the scheme will continue.

Dougie McLaren: Indeed. Ministers have committed to its continuation this session—and beyond, if they are re-elected.

The prevailing rates relief will apply to shootings and deer forests, if they are eligible, in the same way as it does to other rateable properties.

Alex Fergusson: I have two points. First, it has been put to us that if, as seems to have been

accepted, there is going to be a negative impact on rural employment, the proposal will also have a consequential negative impact on aspects of conservation, land management and other such activities. Has any work been done to identify that impact?

Secondly, will you confirm that, whether or not they are levied, rateable values will have to be applied to virtually every non-urban acre in order to identify those that are to have sporting rates levied on them?

Dougie McLaren: On your first question, we have worked with colleagues across Government to consider wildlife management and conservation issues. The Government takes a range of measures to support wildlife management and conservation, and I will let Hugh Dignon expand on that in a minute. We consider the tax proposal very much in that context: it informs us about whether we think that the tax will be sustainable. The fact that it has implications does not mean that we cannot tax. Indeed, we tax many other things for which the tax has implications.

In the absence of quantitative valuations, we make quite a qualitative assessment. Rates for shootings and deer forests were in place for more than 100 years, so we know that it worked, subject to some criticism and issues raised by ratepayers. We will continue to work with ratepayers. Subject to the passing of the bill, there will be a stage where the assessors will go on to produce and publish their draft valuations. The ministers will then take that into consideration when they set the poundage for 2017-18, which is when the measure is due to take effect.

On your point about valuing every non-urban acre, in the past the assessors identified shootings and deer forests by considering where shooting and deer stalking was taking place. The assessors go out and speak to the sector and, as they see fit, to prospective rateable occupiers, and identify what volume of bag—volume of culling—is going on and make corresponding entries on the roll. In the past, if nothing was happening, no zero entry was made on the roll: entries were made only when shooting and deer stalking were taking place. If shooting and stalking were not taking place, the area was not valued and rated.

It will be for the assessors to interpret the issue, as they have the statutory functions to do that. You may want to seek their views, too.

Do you want us to add anything about wildlife management?

Alex Fergusson: I am happy to leave that issue for our meetings with stakeholders, convener, for the sake of time.

The Convener: I think that that is right. Does Hugh Dignon have anything to add?

Hugh Dignon (Scottish Government): No, I do not think so.

The Convener: We will move on and ask more questions.

11:15

Michael Russell: I have no objection to the proposals, except in so far that some real care must be taken on the deer side.

Jamie Fletcher's written evidence points out the issues quite well. There are quantitative and qualitative differences between the management of deer forests and the sporting activity of deer stalking. We have either the culling of deer for management purposes or the killing of deer to provide meat for a market that is presently pretty insatiable for wild venison. In the latter circumstances, elements of what takes place are much more akin to wildlife management and proper deer management, and we should not penalise those activities, because they are absolutely essential in parts of Scotland. We need to be equally careful regarding production of meat for consumption when stalking is simply the means by which the killing takes place.

Those are complex issues—I know that Hugh Dignon is particularly capable of dealing with complex issues—and they will have to be thought through carefully before we amend the bill, so that there are not unintended consequences in that area. I ask officials to consider that matter as the bill proceeds. Is it already under consideration?

Dougie McLaren: It absolutely is. As you say, it is a complex issue, and much of what the assessors do is similarly complex. In this case they need to distinguish between sporting stalking, which is undeniably sporting, at one end of a spectrum, and, at the other end of that spectrum, land management culling, which, for example, Forest Enterprise is paying staff or contractors to undertake. It is not getting a rental income from it; the transaction is going the other way.

Michael Russell: One part of that is a type of agricultural activity.

Dougie McLaren: Perhaps.

In addition, there will be some greyer areas on the spectrum, which are the assessor's job to unpick. Case law is quite helpful.

Michael Russell: It is the job of the bill to define the usage before the assessors unpick it. I would be very concerned if we had legislation that required assessors to interpret the usage. The bill must at least define what it intends to apply rates

to, because circumstances have changed since 1995.

Dougie McLaren: They have. Shootings and deer forests have been statutory lands and heritages dating back to the Lands Valuation (Scotland) Act 1854 and they have not been defined. In practice, they were interpreted from that time right through until the exemption in 1995.

Our initial thinking is that it could be problematic to define "shootings" and "deer forests" in the bill, because that could lead to interpretations or avoidance behaviours.

Michael Russell: I will add a strong caveat to that. If the bill is to be drafted in a way that is based on worry about avoidance behaviours, it is not the type of bill that we should be involved in. We should be making sure that people are operating in a way that is justifiable under deer management and in which deer are a resource—at least there is a way of understanding that. Certainly, many of my constituents would be very worried if usage was not defined.

Does Trudi Sharp want to answer that and give the bill team's thinking?

Trudi Sharp: Dougie McLaren raised the point that we need to distinguish clearly between shoots and culling for environmental reasons and for venison. We understand that those issues are very different. We will definitely take note of what the committee has said today and consider whether anything more could be done either in the bill or in the explanations that accompany it.

The Convener: We need to move to Sarah Boyack.

Sarah Boyack: I will ask a brief supplementary about collection of the new rates and the spending of the money collected, and I want to explore the extent to which you have had discussions with local government colleagues and the Convention of Scottish Local Authorities, given the on-going review of local government finance.

There will be quite a significant change with the collection of new funds. I note that paragraph 103 of the financial memorandum suggests that, although local authorities will collect the money, equivalent funding will be removed from the general revenue grant. Has that been discussed with local government colleagues internally and within COSLA?

There is also the question of how the resource will be used and the extent to which you intend it to be ring-fenced resource. In the same paragraph, you talk about directing

"equivalent funding ... elsewhere within the Scottish Government's budget."

Is that intended to support land management issues, deer management issues and action on wildlife crime? I would like clarification of how you intend to raise those resources through local government, the cost that it will incur in that process, and how the money will be spent.

Dougie McLaren: As you said, local authorities will collect the rates, and they will keep all the rates that they collect. The local government finance arrangements are negotiated and agreed with local government, and its non-domestic rates income is budgeted for every year. That is one of the two parts of the components of the local government finance settlement; the other part is the general revenue grant. If local authorities collect more rates revenue than they were budgeted for, the grant calculation comes down accordingly so that they get the agreed total as part of their budget settlement. That is the existing local government finance settlement.

Sarah Boyack: I understand that, but there will be a new source of revenue.

Dougie McLaren: Indeed.

Sarah Boyack: We will be able to predict the new money, but you are saying that all of that money will automatically go to the Scottish Government.

Dougie McLaren: Because of that arrangement, any additional revenue means less grant paid out from the Scottish budget. That means that the Scottish budget will benefit from the extra revenue. Hence the ministers have indicated that they would direct the extra revenue to the Scottish land fund.

Sarah Boyack: Have you had the discussion with—

Dougie McLaren: We are engaging with local government, and we will continue to do so.

Sarah Boyack: On the costs of collection?

Dougie McLaren: Yes, indeed.

The Convener: Jim, is anything left of your questions, given the marauders—Alex Fergusson and Mike Russell—on your right?

Jim Hume (South Scotland) (LD): Absolutely. That is not a problem at all—it is more important to get the answers out.

Obviously, I am concerned that, as things stand, assessors would be left to decide. The assessors are probably under quite a lot of pressure to bring in as much income as possible for their local authorities.

I want to make things quite clear. Has there been any analysis of ending the exemption for deer management, which is, as we all know,

needed for conservation and environmental reasons. We have had many discussions in the Parliament in which we have been concerned about there being too many deer in certain areas and the lack of the conservation and environmental culling that is needed. Has there been any evaluation at all of ending deer management exemptions and what impact that would have on conservation and the environment across Scotland?

Dougie McLaren: Are you asking whether there has been an assessment of the effect of ending the deer forest exemption for rates on deer management more widely?

Jim Hume: I am asking about the exemption of deer management widely, whether forestry or not. That could also apply to other species that could be called vermin.

Dougie McLaren: We are proposing to end the deer forest exemption. There is a policy consideration in respect of wider deer management, which we are addressing and considering. I am not sure whether that is what you are asking about.

Jim Hume: So an evaluation has not been done yet. The matter is just being considered.

Dougie McLaren: As I said, we can only quantitatively use the figures that we have from past valuation and rating to make our projection. Until we know more definitively what the assessors' valuations will be, subject to the passage of the bill, we cannot accurately model that.

Jim Hume: I think that you are talking more about funds coming in or not coming in. We are more concerned about the environment and that, if we start to tax the culling of deer, for example, for environmental and conservation purposes, there might be less culling and therefore more environmental damage.

Hugh Dignon: It might be useful if I add something. It is clear that we are very well aware of the need to maintain the current cull levels; indeed, they will need to be increased and intensified in some areas where there are particular focuses on deer damage. We are conscious that there is, on the face of it, an apparent potential for a conflict of interest between the taxing of deer culling and the policy objective of improving environmental protection.

There are two things to say about that. First, as Dougie McLaren said, the idea of deer being managed for purposes other than sporting purposes is not new. It is not new for the assessors and it is not new in Scotland, although things might have changed in balance and intensity in the years since the rates exemption

has been in place. For example, forestry culling of deer has been in place for a long time—it was certainly going on while the rates regime was in place, before 1995. We expect that assessors would have an understanding of the issue and an ability to take it into account when setting the appropriate levels and valuations for deer businesses.

Secondly, we think that the incentives around deer management are probably better addressed through more focused and direct interventions, such as the use of SRDP money, support through Scottish Natural Heritage for fencing initiatives and money that we provide—for example, the £100,000 per year over two years that we have provided to help people to develop habitat management plans and do deer census work, to enable them to implement deer management plans that protect the environment. Rather than try to use a tax system with universal applicability for environmental reasons, it is better to develop specific tools in the environmental field to achieve our objectives.

Jim Hume: Thank you.

The Convener: Why are there what you describe as “interim” deer management measures in the bill? Why not either introduce a new approach now or wait for the 2016 review to conclude before bringing forward a more comprehensive package of measures?

Hugh Dignon: As you suggest, the 2016 review is crucial to the issue. As you know, the review was agreed to following the committee’s review of deer management in 2013-14. We agreed with you and made clear to the deer sector that we expect a step change, by the end of 2016, in how deer management is carried out in Scotland.

That left us with the options of doing nothing in the bill, bringing forward a fully developed statutory system, or bringing forward the measures that we have included in the bill. We looked first at the idea of a fully developed statutory system and concluded that such an approach was not practicable for a number of reasons. First, it would be a complex system to get right in the relatively short time that we had to draft the bill. It would be difficult to consult on such a system with a sector that is still working on the basis that there is support for the voluntary system at least until 2016. Also, we hope that the review in 2016 will point to how a statutory system should look and how we should take it forward.

We carefully considered the option of having nothing in the bill on deer management, but we were conscious that we are on a journey in that regard and we wanted to maintain our direction of travel by including measures in the bill. We were also conscious that if it became apparent in 2016

that more measures were needed we would have very little time to meet the 2020 biodiversity targets that we seek to meet. We had close consultation with SNH on what additional measures in the voluntary system might be useful and could be brought into effect to help us to meet the 2020 targets.

11:30

The Convener: That has answered a couple of points.

I want to come back to Dougie McLaren and ask about the assessments. We have talked about the shootings, and it seems that the number of deer that are shot is part of the assessment. Other than that, has there been any review of the assessment for the reintroduction of the rates?

Dougie McLaren: We have discussed with the assessors what would have to be done, and they would need to engage fully with the industry to work out the best way of working. Subject, of course, to anything that might go into the bill, there is nothing that tells them how to value the properties. The 100-plus years of practice leading up to 1995 brought us to the point where it was decided that the volume of the bag should be used, and the decision to be made is whether that is still the best way to go. However, there will have to be quite a lot of engagement, thought and consideration before we reach that point.

The Convener: I do not think that that should be up to the assessors. It is up to us to decide whether we want to take into account the question whether the process that has been followed over the past 100 years is the best way of treating the land that we are talking about and how it is used.

Dougie McLaren: Of course, Parliament has, if it wishes to use it, the right to direct the assessors on how to undertake their valuations. Generally it has not done so, but it can.

The Convener: It must have been the Parliament in London that decided on the bag approach to assessment in the first place.

Dougie McLaren: No.

The Convener: I would be interested to see the chapter and verse on that, because my question is about the saleable value of land that includes shootings and how that is related to the number of stags shot on it. It has always seemed to me to be a very un-modern way of looking at the value of that land.

Dougie McLaren: Indeed, some stakeholders have criticised the approach. The assessors’ central task is to make a best estimate of the hypothetical rent, and they have different ways of and methods for doing that. They are all

professional surveyors and their valuations are tested in court; that is the context within which they work. The history is that the approach was developed by the assessors over time: the valuation method was not legislated for.

The Convener: That is certainly an issue that we should pursue.

Do you have a question, Alex?

Alex Fergusson: I do indeed, convener. Thank you for letting me in.

My question, which is probably for Hugh Dignon, is on a different aspect of part 6 of the bill. I have a real concern about this part and its impact on the south of Scotland, where deer management is very different to the sort of deer management that we have been looking at so far today. There are few, if any, deer management groups in that part of Scotland. I am not saying that we do not have a problem with other species of deer such as roe and sika deer, but can you enlighten me as to how this part of the bill will impact on the south of Scotland, particularly given the timescales that are involved, the size of penalties that could be involved and the present lack of a real deer management structure in the area?

Hugh Dignon: You are right that the focus of a lot of the attention has been on the red deer range in Highland Scotland, but that is not to say that there is no concern about what is going on in the Lowlands. As I am sure you are aware, there has been quite a lot of work going on with the development of the Lowland deer network and a number of Lowland deer management groups—I think that there are seven or eight such groups in place right now.

There are issues with regard to impacts not only on agriculture but on native woodlands in Lowland Scotland and, crucially, deer-vehicle collisions, and SNH is working with the Lowland deer managers to develop strategies for tackling those sorts of issues. That work is on-going. I am not sure that the provisions in the bill are designed to tackle those issues, although they could be brought to bear on them if there were a need to do so. For example, the power for SNH to constitute a deer panel for the purposes of securing greater community engagement could be brought to bear anywhere in Scotland where it was thought that such an aim needed to be achieved.

Alex Fergusson: That will do just now, convener. Thank you.

The Convener: I think that we will just say thank you very much to this panel. We have a general question about common good, but I think that, from a time point of view, it might be easier just to put it in what will be a long letter to you following these evidence-taking sessions. After all,

it is not as controversial as some of the other issues that have been raised.

I suspend the meeting for five minutes—and I mean an absolute five minutes.

11:35

Meeting suspended.

11:41

On resuming—

The Convener: We welcome panel 3: Billy McKenzie, Fiona Buchanan, Angela Morgan and Andrew Campbell have joined Trudi Sharp. We will proceed as quickly as possible with our questions—in particular on agricultural holdings.

Alex Fergusson: Thank you, convener. I am aware of the time, so I will come straight to the point. I want to ask about ECHR issues in relation to part 10 of the bill. The policy memorandum gives quite a lot of detail on ECHR issues in other parts of the bill, but there is not a lot of detail on part 10. Why is that, and can you furnish us with a fuller explanation of the ECHR implications of part 10?

Trudi Sharp: I ask Andrew Campbell to comment on that.

Andrew Campbell (Scottish Government): Good morning. I can certainly speak to the legal aspects. The policy memorandum contains most of the policy justification. If it is helpful to the committee, I can explain the Scottish Government's approach to article 1, protocol 1 of the ECHR. I am not sure whether you might prefer to have that in writing.

The Convener: Would that answer Mr Fergusson's question?

Andrew Campbell: At paragraphs 408 to 432, the policy memorandum contains information about the human rights justification for part 10. Admittedly, the way in which it is laid out does not name check article 1 or protocol 1 directly, but if you look through those paragraphs, you can see that each particular topic—each chapter in part 10—has been addressed. If there are particular concerns about the policy justification that has been given in relation to the human rights paragraphs, my policy colleagues are better placed to assist you.

Alex Fergusson: So you will furnish us with a commentary.

Andrew Campbell: I am more than happy to provide a commentary on the Scottish Government's approach to article 1, protocol 1, if that would be helpful.

Alex Fergusson: Perfect—that is what I am looking for. Thank you very much.

Jim Hume: Some concerns have been raised. Paragraph 298 of the policy memorandum states:

“Despite previous agricultural holding tenancy reforms, there is still an apparent lack of confidence in the sector”.

We have had quite a few submissions that have stated that part 10 is still causing some concern, including from NFU Scotland. The Royal Institution for Chartered Surveyors in Scotland stated in its submission that

“Unpredictable legislative change does not create favourable conditions for property and land markets”,

including the letting of land as we know it. Similarly, the Scottish Land & Estates submission says that there is a lack of confidence in the sector, and therefore a lack of letting land. It would be interesting to hear comments from the panel regarding the lack of confidence that exists, according to a lot of the submissions, in letting land as a result of legislation.

11:45

Trudi Sharp: I will make a comment and then I will hand over to Billy McKenzie. First, I put on record that the aim of this part of the bill is to create a vibrant and modern tenant sector that provides a range of letting opportunities for those who want to enter and progress within agriculture; to provide a fair return to both the landlord and the tenant; and to provide those who want to leave the industry with a route to do so that allows them a reasonable return on their investment and the time, labour and finances that they have put in, while ensuring that the landlord's rights are also respected.

We are aware that different people have had concerns about how the provisions are going to work in practice, and that is something of serious concern. I think that a lot of this is about clarification rather than what is planned in the legislation, but I ask Billy McKenzie to expand on that.

Billy McKenzie (Scottish Government): There are different views on the matter, ranging from the view that we should make no intervention whatsoever to the view that we should make significant levels of intervention. The review group was set up to look at the agricultural holdings sector to see what issues there were and what proposals it could bring forward to improve the situation, if that was what needed to happen. On the back of those recommendations, we have considered what absolutely needs to be done. We believe that the proposals in the bill will have a positive impact on the sector, allowing letting land

to continue to be made available and the situation to improve.

There are problems in the sector, but the Scottish Government believes that they would not be addressed if no action was taken; that would just continue to lead to adverse impacts on individuals' lives and the agricultural sector as a whole. We believe that the proposals in the bill provide the appropriate balance between ensuring that there is fairness, with the rights and responsibilities of both parties addressed, and ensuring that the agricultural sector continues to be an important part of rural Scotland.

Jim Hume: Okay. That is fine. I think that Mike Russell wants to come in.

Michael Russell: My question is only tangentially connected. It seems to me that, given the complexities, we should be listening a little bit more to some of the people who have experience of the sector, some of whom have some quite imaginative ideas. I want to raise two of them. The first is the idea that those who have had tenancies for a very long time—by that, I mean tenancies that have been within families for 50, 100 or 150 years—should be assisted in some way to move from tenancy to ownership because they have essentially created and sustained that endeavour. We need to look at that. I do not think that we recognise enough that a surprising number of tenants have had a farm in the family for a very long time.

Secondly, I ask the bill team to consider a specific change. The submission that we received from Alistair Macdonald mentions the small landholders legislation and the fact that the transfer of small landholdings to crofting tenure, which was proposed in legislation that I was involved in, has not produced the results that it was meant to produce. There are also difficulties with security of tenure. It seems to me that, while we are doing this work, we should tidy up some of the things that have not worked and look to new things that might work.

Billy McKenzie: I will comment on a couple of those points; my colleagues might want to add some detail. The review group considered the conversion of long tenancies to ownership, but it was not considered to be an appropriate action to take if we are to continue to have a vibrant tenanted sector. That would simply send a message to the landowners that would lead to business decisions whereby tenanted land was no longer made available.

We need to try to get the balance right so that tenanted land continues to be made available while, at the same time, the rights of the tenant are improved. We believe that the proposals get that balance right so that tenanted land continues to be

made available but there are options and opportunities for the tenanted sector to convert and own their land, where appropriate, under certain circumstances, such as where harm is being created for them.

We believe that that balance is correct. Obviously, we will listen to what is said during the parliamentary process, to which the Scottish Government will respond, but we believe that the proposals in the bill create the right balance.

We are looking at the small landholdings issue. The Scottish Government is continuing to consider it and we will be doing some research on it. I do not know whether Fiona Buchanan wants to add some detail.

Fiona Buchanan (Scottish Government): Following the group's final report, we knew that about 157 people indicated in the agricultural census that they had a small landholding. We surveyed them all, and we had a 74 per cent response rate to the initial survey, which basically asked people to confirm whether they thought that they had a small landholding or another tenancy type and what the main issues were for them. We are currently analysing those responses with the intention of doing more research in that area. The initial survey was just to get a handle on the locations and to see whether our figures were correct.

We can share with you a map that shows the spread of small landholdings as they were before we analysed the figures. The key point for us is that, if the figures are correct, small landholdings are spread across the whole country, not just in the crofting areas. Whatever we do for small landholdings, we need to make it fair and equitable for parties on either side of the crofting division lines.

Michael Russell: Can I relate both those answers to the issue of confidence? Perhaps unwittingly, they reflect that issue. It seems to me that we need the bill to settle matters for a period. Landowners tell me that the lack of confidence comes from the expectation that every piece of legislation will have a succeeding piece of legislation, and so it will go on. If we are to get this right, we need a strong, clear and radical piece of legislation that says that things have changed. If I were a small landholder, I would be really worried by what I have heard. We seem to be saying, "Oh well, we'll look at that later." However, we cannot do that. Because the decision is to put the agricultural tenancies issues into the bill, we must have a conclusion on the small landholdings issue. It would be wrong to allow the bill to be passed without that.

We must have a resolution on the issue of tenancies that have been held for a long period.

Failure to recognise the need for a conclusion to the debate at this stage would not help either side or increase confidence. Whatever we do, we need radical and clear solutions that will last. With respect, given both those answers, I am concerned that that is not yet the view that is being taken.

Billy McKenzie: I understand the point that is being made. We believe that the proposals strike the correct balance in providing the solution that we want, which is the creation of a vibrant, dynamic tenanted sector with tenanted land still being made available, new entrants getting into the sector, agricultural production continuing and farms modernising. The Scottish Government believes that the proposals strike the right balance.

The review group produced a balanced and comprehensive set of principles. Its position was that everything had to be done at the same time to produce all the solutions to the appropriate extent. The Scottish Government prioritised what was in the report to ensure that actions were taken as speedily as possible to address the situations that exist right now. The other issues, which we believed we had to give more time to, will be considered in the longer term.

Michael Russell: Whichever side you are on on land reform—there are members of the committee with whom I do not agree on land reform—the very strong view of the sector is that there needs to be a conclusion to the issue. I suspect that the committee's view will be that we will have to draw a line, but in my view the line needs to be drawn strongly and radically in terms of change.

Trudi Sharp: We will definitely take account of what we have heard today. We appreciate and share the wish for confidence in the sector.

The Convener: It is a fact that, since we raised the question of small landholders two sessions ago—at that stage, we were trying to take remedial action through the crofting route—attempted action has been blocked by the use of the Land Court in some cases and by unnecessarily complex delaying tactics in other cases. There must be other people who are suffering the same problems, which is why Mike Russell is making the points that he is making. I remember being of that view when we visited smallholdings when Sarah Boyack was the convener of the committee. It is an issue that we would underline.

Let us move on to modern limited duration tenancies.

Sarah Boyack: I want to continue the discussion that we have been having. We totally understand and support the principle of having a sustainable tenanted sector. That is absolutely

crucial, particularly for new entrants. My question is about what is being proposed in the modern limited duration tenancy and the limited duration tenancy. I am keen for the witnesses to spell out for us in detail exactly what the principal differences are between those and what benefits the Government sees in them. The Scottish Tenant Farmers Association has said that this is an opportunity to rebalance the relationship between landlord and tenant. That picks up Mike Russell's point that, every three years, there is a slightly different tweak to the tenancy that is available. There is a tension between the need to be specific and the suggestion that there could be a totally open contract model.

It would be good if you could put on record the specific benefits of the MLDT and the extent to which you believe that it would be a long-term solution as opposed to what we are doing in the bill, in that in a couple of years, another one will come along. Can you say a bit about the sustainability of the proposal?

Trudi Sharp: I ask Fiona Buchanan to respond on those points.

Fiona Buchanan: To put it in context, the amount of rented land in Scotland has declined from 30 to 23 per cent over the past 30 years, although in recent times the total area of rented land has remained broadly constant because of a move to seasonal letting—annual grass lets and cropping lets with no degree of support for the tenant farmer within the arrangements and with the tenant farmers being quite limited in what they can and cannot plan for in their business planning.

On the difference between the MLDTs and the current LDTs, the review group was looking for a letting system that provided more flexibility than the current LDTs. The Scottish Government supports the proposed MLDT, which will be a 10-year minimum-term tenancy except for new entrants. There will be a break clause to enable new entrants to end the tenancy, which will give them flexibility. If they feel that their business or their relationship with their landlord is not panning out, they will have the ability to end the tenancy. The landlord will have the ability to end the tenancy at the five-year point, under the break clause, only when a new entrant is failing under the rules of good husbandry. New entrants will therefore be in a much stronger position.

For the rest of the sector, going into an MLDT will provide a tenant farmer with more flexibility in respect of the rental arrangements and the purposes of the lease. There will also be slightly more flexibility in relation to fixed equipment. We made previous legislative changes to get everybody on to the same playing field in relation to schedules of fixed equipment and to get them all operating in the same way at the start of

leases. However, that is still not working as well as it could, so the new provisions enable a bit more flex in that regard. If someone wants to enter into an MLDT, we will give them the opportunity to do that through the provisions.

The sector asked the review group for more flex, and that is the position that the review group reached. There is no maximum term for an MLDT just as there is not for an LDT at the moment—some of them last for more than 20 years—and the term will depend on the individual circumstances of both parties. At the moment, there is no tacit relocation in the MLDT proposal. Some tenant farming stakeholders have concerns about that, and we are willing to listen to their views around that area.

You mentioned freedom of contract. The current agricultural holdings legislation provides, across the board, balance and protection for tenant farmers and their landlords. Freedom of contract exists but not within that formal relationship or in the legislative framework. Under the current agricultural holdings legislation, there is scope for parties to decide between themselves to contract out of certain elements of their lease provisions. Unfortunately, we are not party to the detail of that because those are separate private contractual arrangements between the parties concerned. When the review group considered the proposals that came forward about freedom of contract, it had some concerns—which it highlighted in section 9 of its final report—that the current circumstances in the agricultural sector are not ready to support a freedom-of-contract approach because the balance between the tenant and the landlord is not as equitable as it could be.

Sarah Boyack: That is a helpful clarification. There is now a complex range of different tenancies, and it might be helpful to have a note saying what they are and how they are intended to work. That would help us to decide whether amendments might be appropriate.

Fiona Buchanan: We will be happy to provide that.

The Convener: We will include it in our long letter.

Graeme Dey: It has just got longer.

12:00

The Convener: Indeed.

The conversion of 1991 tenancies to modern limited duration tenancies is our next focus.

Alex Fergusson: The convener's introduction states very simply what I will ask about. There is an issue here that I want to explore. It relates back to the point that Mike Russell made, which was

amplified by Sarah Boyack. Why is the conversion of 1991 tenancies to MLDTs being left to subsequent regulation, rather than being put on the face of the bill? The reason why I ask and why I think that it is important comes back to the issue of security and the confidence of landowners that this is it. There will be a lot under the bill that I do not agree with Mike Russell about, but I do agree that, at the end of this process, landowners—those who are in a position to let land—need to feel that this is it. They need to have confidence that what we pass through the Parliament is settled for the foreseeable future, so that we can have that vibrant tenanted sector that every one of us round this table wants to see.

I personally have reservations about whether the bill will achieve that, but that is for later on. My question for now is why conversion and the details of that are being left, basically, until the next parliamentary session.

Billy McKenzie: We have put down the regulation-making power for two reasons. First, we believe that the proposal to allow conversion is correct. The review group's findings were thorough on that and the Scottish Government believes that it is the correct thing to do. Secondly, there are a wide range of options, proposals and views on the direction that we should take on conversion. They range from a duration of 15 years to 25 years and all the way up to 99 years; some go as far as full assignation instead of conversion. There are pros and cons to, and options with, all of them.

Rather than including conversion in the bill, we believe that it is more appropriate to take the time to work with stakeholders to develop the appropriate options so that we get the right impact and a settled solution. Also, because of the wide-ranging options, the different views and the pros and cons of each, it is appropriate to allow ourselves the opportunity to have a quick tweak if the original solution proves not to work as well as expected, which can sometimes happen.

Leaving the detail to secondary legislation and allowing flexibility for the future is believed to be the appropriate way to deal with the issue. That is not settled—we will listen to the Parliament; the debate will happen and the Scottish Government will respond to that debate—but that is the reason why we have gone for that solution at this point. We are working with stakeholders, and will continue to work with stakeholders, to make sure that the solution that is brought forward is the correct one and is as final as we can possibly guarantee in a very complex area, in which there are wide-ranging opinions on what to do.

Alex Fergusson: I take your answer at face value and I am glad to hear that you are still working on the matter. I will make the point that three members of this committee, all from different

parties, have now raised the importance of providing reassurance to all the stakeholders across the sector. I hope that you will take that thought with you as you continue to work on this bill. It is fundamental.

Billy McKenzie: Absolutely.

Trudi Sharp: I would like to confirm that we will do that. We have worked very closely with stakeholders and we will continue to do so in taking the bill forward.

The Convener: We will now move on to rent reviews with Claudia Beamish.

Claudia Beamish: Good morning to those of you we have not seen on the other panels. I add my voice to those who make the plea for stability for the future of rural Scotland. In that spirit, I turn to rent reviews, which have obviously been a very complex and taxing issue for the whole of the agricultural sector. That has been so since long before I was involved, but in the time that I have been a member of the committee, the issue has been through the tenant farming forum and now through the agricultural holdings review group. In section 82 there are quite detailed provisions covering where we are going with rent reviews. For the record, and for those who are not clear on this issue, it is about the productive capacity of the land.

I have concerns that detailed regulations will be made that, even on top of all the detail in the bill, might not send the message that it is a settled decision, when there have been so many difficulties that have forced both parties to go to the Land Court in the past. I wonder whether the use of regulations is the way forward, or whether more detailed provisions should be included in the bill. Why is the negative procedure to be used for the regulations in question rather than the affirmative procedure?

Trudi Sharp: I will ask Billy McKenzie to cover most of the policy points and Andrew Campbell might want to comment on the use of the negative procedure. I reiterate that we will be appearing before what used to be called the Subordinate Legislation Committee in a couple of weeks' time.

Billy McKenzie: You mentioned productive capacity of the land and asked about what is in the bill and why regulations are to be used. The position is similar to that on conversion. Productive capacity was the agreed solution that the review group came up with. We believe that that is appropriate. It is based on similar, although not identical, practice in England. We believe that productive capacity is the right basis on which to proceed, but it is crucial that we work with stakeholders and experts in the industry on the detail. That process has already begun. We have had two meetings with all the experts and the

stakeholder bodies to develop several crucial aspects: the definition of productive capacity; the other factors that it might be desirable to take account of in that; the determination of fair rent; and the prices that people might want to take account of when they assess the value of the productive output.

All of that is incredibly complex. We have discussed matters with the experts for six hours so far and we are nearing a solution. We would be more than happy to provide information on the back of those meetings, for which papers have been produced. Over the next few weeks, we should reach a settled opinion on a definition of all the relevant factors. We could share that information with the committee to aid its understanding. It is an incredibly technical and detailed area. That is why we have left things to regulations. They will give us the flexibility that we need. The argument on conversion applies to an even greater extent to productive capacity and all the other factors that it is necessary to take account of. We must have the flexibility to tweak things, because we are talking about practices that valuers will work with farmers and landowners to put in place. We might have to tweak things as we go through the process.

We would be more than happy to provide the committee with the detail that is available on the back of those meetings. We have already shared that information with stakeholders, who are helping us to shape all the material that is being developed.

Claudia Beamish: Do you envisage that one of the aims of that process will be to provide reassurance in relation to the concern of Scottish Land & Estates that the Scottish Government has not done an impact analysis of where the use of productive capacity in the setting of rents will lead?

Billy McKenzie: Scottish Land & Estates has concerns that we are going in the wrong direction. That is one opinion. There are others who believe that we are going in the right direction. We will not be able to completely satisfy Scottish Land & Estates, but it is satisfied that it will have a full part to play in shaping the tool that will be delivered at the end of the process. It might not agree that we should produce the tool, but it will take part in the process to agree on what that tool should be.

Claudia Beamish: I suspect that you will not be able to do this, but I will ask the question anyway. Can you give us an indication of whether the new form of rent review that takes into account productive capacity is likely to put rents up or down?

Billy McKenzie: It is impossible for anyone to say.

Claudia Beamish: I thought that you would say that.

Billy McKenzie: There is a wide range of views on what could happen.

Claudia Beamish: As I understand it, different sectors have different views. Has any assessment been made of where we might be going in that regard?

Billy McKenzie: At this point, the review group has considered the matter and reference has been made to what happened in England. The position is too uncertain. There are too many different factors that feed into the process. The future price of agricultural produce is one factor that is completely unknown. That will feed into the issue of productive capacity and what the rent will be. Individual business decisions will feed into the determination of individual rents. It is too uncertain an area. What is proposed will increase the transparency in the process, so that people can have an informed debate on what their rent should be, rather than engaging in what many people say is a mystical non-transparent process now.

Claudia Beamish: Would you kindly give us some information about what the advantages of the new form of rent review are, from the perspective of having looked at the English system? It would be helpful if the committee could see something brief about that.

Billy McKenzie: We will provide that with the other information that we will be sending to the committee.

Claudia Beamish: That would be helpful, thank you.

The Convener: Are you developing the new system on the basis of modelling different sorts of potential rents, such as for extensive sheep farms or intensive arable farms? Is that how you are proceeding?

Billy McKenzie: That is the intention. Once we have a proposal that we believe defines productive capacity and takes account of all the other factors, we intend to test it on a wide range of farms. We already have volunteers to allow us to do that, and the valuers are going to help us with the process.

The Convener: Thank you. We will move on to succession and assignation.

Angus MacDonald (Falkirk East) (SNP): Section 84 of the bill will amend section 10A of the Agricultural Holdings (Scotland) Act 1991 to widen the classes of family member to whom 1991 act tenancies could be assigned, and section 87 seeks to amend section 11 of the 1991 act to widen the classes of family member to whom 1991 act tenancies could be bequeathed. The bill will substantially widen the classes of potential

successors. In its submission, NFU Scotland broadly welcomes the move, and has said that

"If the policy aim is to extend the lifespan of secure tenancies then the proposals in the Bill will aid this, however if the policy aim is to address unfairness of death out of turn or the inability of direct family to take over a business, [then] the proposals seem to go wider than what is required."

Would you explain what the policy intention of this part of the bill is? Is it to extend the lifespan of secure tenancies, or is it to address the unfairness of deaths out of turn or the inability of direct family members to take over a business?

Trudi Sharp: I will ask Fiona Buchanan to comment in a moment. The aim behind those provisions is to encourage and enable tenants to retire and move on, at a time they deem appropriate, in order to release land to younger tenants and ensure that it continues in productive agricultural use. That is the broad position from which we were coming at the proposals. The NFUS submission refers to two particular categories of circumstance that might apply.

Fiona Buchanan: In addition, the provisions will modernise the classes of successor to reflect modern family structures and to bring the provisions into line by providing the same rights for succession by bequest, transfer by an executor or assignation.

As I am sure members are aware, modern family structures have changed considerably in recent years, and that applies equally to farming families. The current legislation can have discriminatory consequences by not providing a spouse with the same rights as their partner on the death of the partner. It also does not provide fairness to the sibling who is a partner in the business, because tenancies are normally in the name of an individual rather than of a company; if a person is a partner in a company and their brother or sister dies, there is no guarantee that they can take on the tenancy, so the farming business could end.

In 2014, the tenant farming survey had 3,095 responses, with 20 per cent of respondents having a family member who wanted to succeed to the tenancy but who currently fell outwith the classes of eligible successor. Over half of those respondents identified that person as a sibling, while a third identified the person as a niece or nephew.

The provisions also enable us to address issues of death out of turn, where someone unfortunately dies and the members of the family are too young to take on the tenancy at that point. That family farm would then fall out of agricultural tenancy. The provisions would enable succession to go back up and along and down the family tree to

provide protection for the family farm and enable the continuation of the agricultural tenancy.

12:15

Angus MacDonald: Okay, I think that I follow that answer. However, just to clarify, was consideration given to allowing non-family assignation for tenants under the 1991 act?

Fiona Buchanan: The agricultural holdings review group considered that proposal and in section 7 of the final report stated that

"such a change would create significant long-term inflexibility"

in the agricultural sector for tenancies under the 1991 act and

"reduce the confidence of landlords in making land available in the future",

thus defeating the purpose of the objective of a viable tenanted farming sector. The group also concluded that

"the public interest case for such a change has not been made."

Instead, the group recommended that the Scottish Government consider conversion as the alternative solution that would provide flexibility to more modern farming. As Billy McKenzie has explained, we are currently exploring that.

Some stakeholders have raised concerns and would like assignation to be restricted to someone directly involved in the agricultural business. However, because of the modernisation of Scottish agriculture, if a family member cannot work on the particular farm involved and they want to farm, they will have to go off farm to do so. If it was limited to those who are directly involved, we would end up in arguments about, for example, brothers, where one had to go and farm on another farm because the family farm was not big enough to support two farmers. It is important that the position is flexible enough to adapt to modern farming and be fit for the future.

Alex Fergusson: I would have to argue that if one is going to address modern farming, given that farming changes all the time, the system needs to have flexibility to allow holdings to be reconfigured when they become vacant in order that adjustments can be made to suit different farming techniques. That flexibility is not helped by the assignation proposals before us.

I have two brief questions. First, if the intention is, as you say, to achieve greater churn in the sector, what are the other ways of looking at that? There are other ways in which that could be achieved without a straight assignation proposal. Secondly—and I probably should know this, but I do not, so please forgive me—is it envisaged that

the landlord will have the right to take on an assignation at value when it comes up?

Fiona Buchanan: I would like to ask my colleague Angela Morgan to talk about what we have done in relation to other opportunities for new entrants.

Angela Morgan (Scottish Government): It is hoped that the assignation proposals will open up new opportunities for new entrants. However, there are other aspects to the bill, which we have spoken about earlier. We think that the break clause after five years for MDLTs will lead to an increase in let land because it will give landowners more confidence in the inexperienced farmers involved. The Scottish Government is also looking at share farming opportunities. We are looking at other elements in relation to new entrants, not just the assignation proposals.

Alex Fergusson: I am grateful for that answer, but my question did not relate just to new entrants. It will not only be new entrants who take on assignations—it will be farmers' sons and nephews and all sorts of others who may well be, and probably should be, involved in farming already. How a new entrant is classified is open to interpretation, as much of the bill seems to be. I am sure that we can drill down into that later.

Could you address my second point on whether a landlord will have the right to take over an assigned lease?

Fiona Buchanan: I would like to come back to you on that in writing. As the provisions are drafted, the issue is quite technically complicated and there are many provisions that relate to that and interlink with the 2003 act.

Alex Fergusson: That would be fine, thank you.

Dave Thompson: I welcome the new panel. I want to tease out the open assignation issue. Was consideration given to the fact that open assignation to anyone would simplify the situation and give greater certainty, because people would then know absolutely that a tenancy could go to anyone and everyone would know where they stood? Would that not allow secure tenants a flexibility that they could not achieve to the same extent otherwise?

If we leave it to the family member situation—and I can understand some of the arguments about why you would do that—the number of tenants will inevitably continue to reduce over time, although perhaps at a slower pace than we have seen in recent times. Can you elaborate a wee bit more on that?

Billy McKenzie: As you have heard, there has already been a reduction in tenancy land; indeed, it has reduced significantly in a fairly short period of time. If the Scottish Government had legislated

for full assignation—in other words, to keep perpetual tenancies—one would have been fairly sure that that would have resulted in landlords not making any more tenancy land available.

Dave Thompson: But we are talking about secure 1991 tenancies. As you have said, there has been a big reduction in recent times, and I think that the road that we are going down will allow that reduction to continue. It will not lead to new tenancies being established. Moreover, I have not heard anyone arguing that other letting vehicles—short limited duration tenancies, modern tenancies or whatever—will confer any rights in the long term. Given that we are talking about a very specific group of tenants—that is, those with 1991 tenancies—I am not sure that I accept the premise that the situation would continue. What I am talking about would give absolute certainty. If it was clear around the table and if everyone agreed that it would deal only with those tenancies and that there was no intention to pick up any others, would that not give the certainty that we are looking for?

Billy McKenzie: That view is held by some. In light of the findings of the review group and the consideration that we have given to them, the Scottish Government wants to try to maintain confidence in the letting sector as a whole. As they told the review group—and as the review group itself understood—landowners base their business decisions on what is happening to the whole letting sector. If we decrease their confidence and increase their concern that their business choices are going to be continually curtailed, we could face a situation in which tenancy land is no longer being made available. That would be a significant problem for Scottish agriculture, because we want to ensure that there is a range of opportunities not just for new entrants but for those who are progressing up the ladder.

We have to get the balance between the rights and responsibilities of the landlord and the rights and responsibilities of the tenant correct in all aspects of the bill. There are differing opinions as to whether we have achieved that, but the Scottish Government believes that the bill achieves that aim in the appropriate way to ensure that we get the impact that Scottish agriculture needs.

Dave Thompson: As a quick follow-on, convener, one might say that the range of family members who can take over tenancies has been increased pretty massively. Given that it is only a small step from there to open assignation, why would the current proposals lead to less letting by landlords while open assignation would not? After all, there is not a big degree of difference between the range of people that we are talking about.

Billy McKenzie: To be honest, I cannot define the degree of difference. However, there is a

difference, and we believe that what we are doing sends a stronger message than assignation or succession and that it is an improvement on the current situation. That said, we do not believe that going as far as full assignation would be appropriate.

I will pause at this point, because I do not know whether Andrew Campbell wishes to come in on this.

Andrew Campbell: No.

Dave Thompson: So it is only a matter of degree. I am not sure that I agree with your conclusions, but we can deal with the issue as the bill progresses.

Michael Russell: I just want to make an observation. The more I hear about this, the more I read these submissions and the more I talk to people, the more I think that nobody really believes that this will settle the matter. This is a real problem that we are going to have to confront as the bill goes through and the process of amendment takes place.

If it is true—and it might well be true—that a lack of confidence will grow the wider assignation becomes, the logic is that we return to a very narrow situation in which assignation is very restricted. However, if we think about the health of rural communities and families—and we have just heard from Fiona Buchanan about the families involved—the other logic is that we should take a much wider approach to assignation and eventually go from family assignation to what Dave Thompson has referred to as open assignation. With a fit-and-proper-person test, which I think is essential, and with the possibility of assignation at value to landlords, which we have not yet discussed but which is certainly there, you might be able to construct a stable situation. However, I am not sure that you will construct a stable situation simply by making incremental changes on both sides and hoping that somebody is going to end up happy. That does not seem to me to be a recommendation for progress.

I am not asking for comments on that point. I simply think that there is a real conundrum that we are going to have to address.

Trudi Sharp: Nevertheless, I would like to make a brief comment. As Billy McKenzie has pointed out, this is a balance that we have struck in the bill, and as the committee proceeds to take evidence, it will be interesting, given the differing views, to see whether that balance appears to be right or whether there needs to be a different balance. We have attempted to take account of the varying views that we have heard and the representations that we have received and provide something that we hope is an improvement for tenants and gives confidence to landlords. I have

no doubt that you will want to take evidence from the different parties on the matter.

Michael Russell: I do not think that you can have everything all the time. The question here is whether you can have continued or, indeed, increased confidence while ensuring that the rights of tenants, the human rights of those involved and the health of communities are respected. That is a decision that we will have to come to but, at the moment, the rights of tenants and the health of communities weigh more heavily with me.

The Convener: With that, we move on to Graeme Dey, who will ask about the issue of waygo and the amnesty for improvements.

Graeme Dey: I will be as brief as I can, convener. Can you explain the rationale behind the bill's provision of a two-year period for serving an amnesty notice rather than the three years suggested by the agricultural holdings legislation review group and the thinking behind not including in the bill an updated list of eligible improvements to reference and reflect modern circumstances, given that the list as it stands was compiled more than 70 years ago?

Angela Morgan: It is expected that two years will be sufficient to resolve the issues in the majority of cases. The sooner parties can reach a clarification on the matter, the better. Obviously, for some individuals, the final length of the amnesty period will go beyond the two years if they apply to the Land Court towards the end of the two-year period. That said, we are listening to stakeholders' views on the matter and will carefully consider all the evidence that is gathered. At the moment, however, we think that two years should be sufficient to resolve the issues.

As for the schedule relating to eligible improvements, we are aware that the list is quite outdated, and we are working with industry bodies to come up with a more modern and suitable one. We are progressing that at the moment.

Graeme Dey: So you are giving us an undertaking that we will get there.

Angela Morgan: Yes.

Graeme Dey: It is good to have that on the record. Thank you.

The Convener: We will conclude there. I thank everyone for their contributions. As you will know, the committee will write to you after the meeting with a list of additional and follow-up questions.

I suspend the meeting briefly for a changeover of witnesses.

12:28

Meeting suspended.

12:34

On resuming—

Veterinary Disease Surveillance Centres

The Convener (Rob Gibson): Agenda item 3 is evidence on the review of veterinary disease surveillance centres from Scotland's Rural College. Our witnesses today are from the college's commercial division, SAC Consulting Ltd. I welcome Mike Wijnberg, who is the managing director of SAC Consulting, and Brian Hosie, who is the head of SAC Consulting vet services. We will hear a short opening statement from Mike Wijnberg, then proceed to questions. Welcome, gentlemen. I look forward to hearing what you have to say.

Mike Wijnberg (SAC Consulting Ltd): Thank you very much. We are very pleased to have this opportunity to share our position with you.

You will be aware that the stakeholder consultation ran from 2 June to 10 July. We have considered very thoroughly the responses that we received. Some work arising from that is still on-going.

This process has inevitably resulted in a great deal of uncertainty for staff, particularly those at the affected sites. No decisions have yet been concluded with regard to our next steps, so no announcements have been made. Procedurally speaking, once we have reached a decision on our next steps, our staff and the unions will be the first to be made aware. A formal staff consultation would then be initiated. I respectfully request that committee members bear that in mind, given the public nature of this meeting.

I will outline SRUC's role in the decision-making process on animal disease surveillance. SRUC, through its commercial division, SAC Consulting, delivers veterinary surveillance and public-good advisory services under a memorandum of understanding with the Scottish Government.

Following a recommendation from the Kinnaird report, the Scottish Government established an independent strategic management board to advise on the future of veterinary disease surveillance in Scotland. The three independent members of the SMB were appointed by the Cabinet Secretary for Rural Affairs, Food and Environment and it is chaired by the chief veterinary officer for Scotland.

SAC Consulting has considerable technical expertise in animal disease surveillance. As the main operational protagonist, it works with and through the strategic management board on matters affecting the strategic direction of disease surveillance in Scotland. We have been doing that for the past three and a half years.

Under our memorandum of understanding with the Scottish Government, there are areas in which SAC Consulting is required to obtain specific permissions in order to proceed.

I will say a few words about disease surveillance itself. There are basically two broad areas of disease surveillance. The majority of our activities at our eight disease surveillance centres across Scotland involve vets, farmers, crofters and others submitting carcasses and other specimens to our laboratory facilities as part of what is termed passive surveillance. That relies on the initiative being taken by the individual vet or farmer to submit material to us.

Active surveillance, on the other hand, is where the initiative is taken—perhaps by us or perhaps by others—to investigate actively what is believed to be a disease trend. That might be on the basis of information that has become apparent, and on the basis of data that is available. I highlight the difference between passive and active surveillance and emphasise that we have ambitions to use both forms of surveillance more closely as we go forward. We would be happy to talk about that.

Disease surveillance around the world has been receiving attention in terms of how it is carried out. Specifically on Scotland, I should make you aware that the disease surveillance infrastructure dates back to the 60s and 70s in many cases, since when, of course, the structure of farming has changed very significantly, livestock numbers have, by and large, decreased significantly and Government approaches to public funding—not just in Scotland, but in other parts of the world—have changed significantly, too.

There is now a need to modernise our approach to disease surveillance in order to deliver a high-quality output and the best value for money for the taxpayer. Indeed, that was recognised in the Kinnaird report, which was published in 2011. We need to make better use of passive and active surveillance and ensure that the widest and best use is made of the knowledge and skills of the broader veterinary and farmer communities. We believe that we should make better use of modern technology in order to join up that information and better co-ordinate it.

It was against that backdrop and, more recently, the acute pressure of budgetary cuts that, on 2 June this year, SRUC was prompted to move to a stakeholder consultation. That was one day after I started this job with SAC Consulting.

I have one final introductory point to make, which I hope provides clarity. SRUC bases various operations at Drummond Hill in Inverness. The first of those is a disease surveillance centre, which provides a post-mortem facility to local vets

and farmers. The second is a laboratory facility, which tests the specimens that arise from those post-mortems and other samples that have been submitted by vets and farmers. A marine animal stranding team is also based there. Fourthly, there is an epidemiology team and, fifthly, there is a farm business consultancy office. Those are five separate groups. A total of 49 members of staff work at the site, 15 of whom are involved in the disease surveillance centre and the marine animal stranding team. The other 34 work in the epidemiology team and the farm business consultancy.

SRUC concluded that it would support the University of the Highlands and Islands science park in Inverness by transferring the epidemiology and farm business consultancy teams to the new campus, when it opens in the first quarter of next year. However, the disease surveillance centre was not included in that move, because at that point we were still in discussions with the SMB about the future of disease surveillance across Scotland.

I hope that that helps to set the scene.

The Convener: Thank you. You have told us why disease surveillance in Scotland is important and how the DSCs relate to broader issues. You have eight centres in Scotland and you have said that you want to rationalise those. We will come to the detail of the different reviews that have been done. However, the point has been made about the Inverness DSC that it is there to support crofting communities and the work of the outbreak committee of NHS Highland. Will you tell us how that works or the level of work that is involved in that?

Brian Hosie (SAC Consulting Ltd): I can perhaps help you there, convener. The principal reason why we have our eight disease surveillance centres around Scotland is that we can engage with the local livestock farming enterprises and their veterinary practitioners. We operate through the veterinary practitioners—we are consultants to the private vets in the field.

To undertake our disease surveillance role on behalf of the Government, for which we get Government funding, we require to receive submissions. The most valuable submissions that we receive are, of course, post mortems, because they allow us to get down to the nuts and bolts—the details—of why an animal has died or failed to thrive.

It is by looking at that material in depth that we are able to monitor disease trends and look out for new or re-emerging diseases. We have a good record on that. Over the years we have picked up various things—a recent example is Schmallenberg virus, which causes deformities in

calves and lambs. Before that we had bleeding calf syndrome.

You mentioned Inverness. With respect to individual sites, it is important that our vets engage with the community, which ensures that we get a good supply of material in.

In discussions with the strategic management board, with which we have been in close dialogue over the past three and a half years, we are recognising that the number of post-mortem submissions is the main determinant of whether a centre should be retained and what we need to do there.

12:45

Unfortunately, we are not getting from Inverness the submissions of post-mortems that we would be looking for. It is at the bottom of our league table—if we want to use such a term—and submits fewer than Thurso and all of our other sites. In Inverness we are seeing about 240 to 250 post-mortem submissions in a year, across cattle, sheep, pigs, poultry and game birds. That has led us to ask whether there is a better way of dealing with the service to ensure that we are delivering for the area—that is where we have engaged.

If we look at cattle submissions for our centres across the piece, we are dealing with something like 1,300 to 1,400 cattle post-mortem diagnostic submissions in a year, but only 80-odd of those are coming to Inverness. That is the kind of driver that we need to be looking at to do our job, and why we have engaged in consultation to try to open up other opportunities for delivering services in the area.

The Convener: You have said nothing about serving the crofting communities, or about working with the outbreak committee of NHS Highland.

Brian Hosie: With regard to the crofting communities, the veterinary practitioners—private vets—are supported through the Highlands and Islands veterinary services scheme. Freda Scott-Park has a leading role in managing that scheme, and she is also on the strategic management board: we have that engagement.

The Convener: However, we are talking about the fact that the private vets do not want to take on a larger job with doing post-mortems.

Brian Hosie: Yes—that is what they have said. It is unfortunate that, in contrast with other parts of the country, they have closed their minds to that. It would have been nice if they had seen the opportunity to help their business. We will without a doubt have to go back and reconsider that, Mr Convener; that is part of the feedback that we got from the consultation. We will have to engage in a new way with the Inverness area. For any

measures, be it the number of holdings in the area or the livestock numbers, if you look at the ratios to the numbers of post-mortems we are getting, Inverness is just not getting the submissions in.

The Convener: We will have a look at that in more detail. There is an aspect that Graeme Day wants to take up.

Graeme Dey: Good afternoon, as it is now. While referring to the 240 to 250 post-mortems a year that Inverness deals with, Mr Hosie mentioned game birds. Do you deal in any way with the consequences of wildlife crime—raptor poisonings and that sort of thing—and if you do, are you seeing an upsurge in the numbers?

Brian Hosie: We support various people in carrying out forensic post-mortems and pathology across not just raptors but wild mammals as well. That is supported financially by our activities with the Scottish Government. We see roughly 200 wild bird carcasses a year across our eight sites. It varies from year to year as to where it is busiest—as you might say—particularly when it comes to crime. Unfortunately, as the committee will know, in Inverness there has been a spate of raptor poisonings in the past wee while. Our teams work closely with the authorities on such cases. We have ensured that our veterinary staff have had appropriate training to give support to the fiscal if it comes to prosecutions, and to provide the correct evidence.

Graeme Dey: Mr Hosie gave a figure of roughly 200 bird carcasses across the eight sites, but I would have thought that the majority of those would be concentrated in places like Inverness and perhaps Perth. The spread will not be even, will it?

Brian Hosie: Where the birds come in varies from year to year. I am not just talking about iconic species; we also get finches and other birds. One of my previous colleagues worked very closely with the RSPB Scotland on its garden bird survey. It is important that we see those carcasses because we screen them not just for crime but for infectious diseases including avian influenza and West Nile virus. Samples are taken, as part of the Great Britain strategy, to see whether there has been an incursion of exotic viruses.

Graeme Dey: One assumes that there has been an upsurge in recent years in such things as raptor poisoning post mortems in Inverness.

Brian Hosie: There is greater realisation of the importance of wildlife crime. I do not know whether there is more of it; in fact, the evidence from the Science and Advice for Scottish Agriculture data is that there is an encouraging downward trend. It is good that there is general acceptance in the community of the importance of tackling the issue.

I would not like the committee to think that we are not cognisant of the fact that we deal with such cases, but the principal reason why we have our eight DSCs is to support veterinary practices and livestock farming. Dealing with wildlife crime and wildlife as a whole is very much seen as supplementary. People who are willing to bring in carcasses from wildlife species are often willing to travel that bit further.

Dave Thompson: I will tease out a wee bit more about the Inverness site and the distances that are involved in getting anywhere in the Highlands and Islands. That may be part of the reason why people, lots of whom have very small holdings, find it expensive, difficult and time consuming to get to Inverness. Those folk will find it even more difficult, expensive and time consuming to get to Aberdeen, Thurso or the central belt to take animals to a DSC.

There is a general principle that we need to bear in mind: if we always base our decisions about Highland facilities on the fact that they are a bit smaller than facilities in the rest of the country, we will continue to denude the Highlands of facilities. The logic will be that the small facilities always have to be the ones to go. We need some reverse thinking if we are to develop and build the Highlands and Islands—and they need a lot of help, believe you me. That is my first point.

To follow on from that, and from looking at the map of your site locations, it seems to be far more logical to keep the Inverness site open and shut the Edinburgh DSC, because there are another four DSCs down in the central belt that cover a good geographical spread. It is relatively easy for folk to travel there, because the roads are far better and it is easier to drive down a motorway or dual carriageway than to come from Skye on pretty poor Highland roads. I put the point first about a bit of reverse thinking.

Brian Hosie: Thank you for that suggestion. We are alert to the fact that there are disadvantaged areas, and the SRUC and SAC Consulting are alert to the needs of the more remote and disadvantaged communities. We have our advisory service throughout Scotland, which includes the Outer Hebrides and Skye. We are alert to such problems.

We are asking whether there are better ways of working by taking advantage of new technologies to support practices in the Highlands and Islands and provide a better service. You are right that there are many small units in the Highlands and Islands; we reckon that 5,500 livestock holdings, or 25 per cent of the Scottish total are in the region that the Inverness centre serves. Because of exactly the point that you made about distances and the fact that farmers tend to be willing to travel about 30 miles or 50km, most of the area's work

comes, unfortunately, from only about 20 per cent of holdings, 1,000 of which are in this catchment area and some of which are not very large businesses.

Sixty per cent of holdings are more than 100km away from Inverness. We are starting to say that there is a disadvantage all the way through and we have been asking how we can do the job better. We have been exercising our minds and speaking to our strategic management board and we have had the consultation responses. We are working up ideas about how we could do the job better, to mutual benefit. We can provide our disease surveillance activities only by working with practices and farmers to deliver to them a diagnostic service that they can benefit from, while we benefit from the surveillance information.

Dave Thompson: That does not fully answer my question. If you do away with the Inverness DSC, all the farmers and crofters who use it will certainly not go to the next nearest centre in Thurso or Aberdeen. You will lose all those people if they will travel only 50km—you will immediately get rid of all that area and have no data from the Inverness and west Highland areas coming into your system, which would not be very clever.

Brian Hosie: It would not be at all. We are exploring alternatives, some of which were raised in the consultation. Somebody suggested that itinerant services are needed. Should our vets be based up there but working out in the community? We cannot just switch on such ideas overnight—we have to do our homework and make sure that we have things sorted out. One of the benefits of the consultation was that we had some really helpful responses. I think that committee members received a summary of the responses in today's meeting papers.

Dave Thompson: Since you are trying to save money, would you see any benefits in your overall costings from closing your Edinburgh DSC, with its workload going to the four DSCs round and about it?

Brian Hosie: We are working with the Kinnaird recommendations, which were produced in 2011 following a two-year review. One of those was that we should work with the vet schools. We are fortunate in Scotland to have two world-class vet schools, in Edinburgh and Glasgow. It makes sense for us to maintain the facility in Edinburgh so that undergraduates, who are after all our future veterinary surgeons, have greater exposure to veterinary pathology, including live veterinary pathology—real cases and not the sort of pickled specimens that I, unfortunately, had to deal with when I was an undergraduate 40 years ago.

Dave Thompson: Sorry for—

The Convener: Just one final point, please.

Dave Thompson: It is not very far from Edinburgh to the Borders. The map shows that it is less than an hour to the Borders, so students could easily go there for the experience that they need in a DSC.

If you want to raise money from the valuable Drummond Hill site, you could move the Inverness DSC to Dingwall. You could still get a good price for the Drummond Hill site and you could probably get a much cheaper site and a new facility in Dingwall. I ask you to consider that.

Brian Hosie: That is a fair point about Dingwall. One thing that came out of the consultation was that many vets and farmers feel that the existing site at Drummond Hill is in an inappropriate location and that access is poor, because the centre is in an urban situation beside a primary school. Those respondents were keen that we should consider somewhere such as Dingwall as more of a natural hub for the area. Those were positive points.

Michael Russell: I will re-emphasise the point that Dave Thompson made and cut through this. I have looked on social media and in other places at the commentary on your announcement from the people in the Highlands and Islands who have used your service. That commentary is entirely negative; people do not want the closure to happen and your service users do not want it to happen.

This is a little unfair to you, because you came to the committee to address one issue, whereas those of us who are Highland members see lots of other issues, but I regret that you are simply confirming what takes place regularly. Organisations say that they do not have enough critical mass in the Highlands and Islands, so they will move somewhere else, and they tell people that they will provide a better service because they have new technology. That could be the case at some time in the future, but it is not the case now. It will not be the case for many people in the Highlands and Islands whose access to broadband and mobile phone technology is poor.

Therefore, until there is a clear alternative, about which your users say, "That's much better. That's really what we're looking for," you should not be closing the Inverness centre. It is as simple as that. I speak as a Highlands representative. Highlands representatives need to say, "Stop withdrawing services and make sure services are provided near to us." As Dave Thompson said, if organisations have to close places, they should close the places that have an alternative within easy travelling distance.

It is an open and shut case. I am sorry to be blunt, but there are circumstances in which it is necessary to be blunt. You have to pay attention

to what the people who use your service want; they do not want it to close.

13:00

Mike Wijnberg: Let me respond to that. Since arriving in my post, I have spent a considerable time travelling around the Highlands and Islands and I now have a good idea of some of the area's demographics, as well as the topography and the remoteness of some of the areas that we cover. In light of the consultation that we have had, I am also aware of the sensitivities about depletion of services and all the issues that you mentioned.

I will try to explain our concerns from the veterinary perspective. Our focus here is on disease surveillance and the technical aspects of that in the context of the budgetary constraints that we have. We have also started to think—much of this thinking has come out of the consultation—that we can segment the services that we provide. If I may, I will sketch out where we think we could go in the longer term.

The Convener: Do we have that information? Could you have given it to us in writing before the meeting? In the future you will move to a service that might well develop in a particular scientific way, but the immediate issue is that centres are under threat as a result.

Mike Wijnberg: Let me respond very—

Michael Russell: I have the greatest respect for the arguments that you make, and I am sure that, by your own parameters, you believe that they are correct. However, there is an equal and opposite point of view from the people who use and require your service, and the issue of rurality weighs heavily on the scales. I am sure that the committee will read what you provide to us, but the weight of evidence from my constituents, Dave Thompson's constituents and Rob Gibson's constituents is heavily against your proposed changes. I hope that your organisation will bear that very much in mind.

Mike Wijnberg: We recognise that and we will bear it in mind. That certainly comes across strongly in the consultation responses. In our thoughts about where we are and where we are going, we do not have an immediate intention to leave an absence of access to our services. The key service is the availability of a facility for post mortems—

Michael Russell: I am sorry, but I must press you, because the phrase "absence of access to our services" is not the same as saying, "I'm sorry; we're not going to take this action because it is the wrong action for the people who use us." What you said implies that you think that there are different ways of delivering services and that you

will just do what you propose. However, there are people who say, "We do not want you to change what you are doing because, with the greatest of respect, we do not believe that access will be adequate." That is the position that I, Dave Thompson and others are representing.

The Convener: I will bring in Angus MacDonald and Sarah Boyack; we will broaden the discussion out to the whole-Scotland review in a minute.

Angus MacDonald: With that in mind, I am conscious that Auchincruive has not been mentioned. I am not sure how many submissions you received in the consultation, but I have no doubt that you noticed the submission from my colleague Adam Ingram, who is the member for Carrick, Cumnock and Doon Valley. As you would expect, he thinks that the Ayr DSC should be retained at Auchincruive. He made a number of strong points in the submission. He said:

"The farming community in the South West of Scotland are bitterly resentful at what they see as the forced expropriation of a valuable part of the farming infrastructure which sustained their activities. They wish to see the existing centre maintained at Nellie's Gate ... It is clear the removal of the comprehensive post-mortem service and sample processing facility at Auchincruive will significantly reduce demand for the services in one of the most livestock dense areas of Scotland. This will impact very negatively on livestock disease surveillance in Scotland. The risks to Scottish farming far outweigh the benefits to be accrued from small cost savings."

I will just pick out another point. Adam Ingram said:

"My understanding of the Kinnaird Report findings was that the Strategic Management Board were tasked with creating and implementing a new strategic vision for veterinary surveillance in Scotland which may include the reduction in the number of DSCs. This consultation fails utterly to place the potential closure of two sites in the context of delivering any kind of vision. It appears simply to be an exercise in cost cutting by centralisation."

I am keen to hear your view on the Auchincruive facility, given Adam Ingram's view.

Brian Hosie: I spoke to Mr Ingram on the telephone during the consultation. The Ayr Auchincruive DSC is one of our busiest centres. In contrast to our Inverness centre, which receives 244 submissions of carcasses per year, we are looking at 600-odd submissions at Auchincruive. The situation is very different there; the centre serves an important livestock area.

You suggested that there is a lack of vision, but the vision that we adopted was laid out in the Kinnaird review, which was conducted over two years from 2010 to 2011. In that was the thought that there would be benefits in working closely with the two vet schools—Auchincruive would work with the vet school in Glasgow—so we have had a close dialogue with them and they were actively involved in the consultation. They attended the

meetings that were held at Ayr racecourse with farmers and veterinary surgeons from the area.

We are taking the concerns on board. If a PM facility was created at Glasgow vet school, some farmers would benefit because they would be closer to it and we could service them better. Unfortunately, that would be to the detriment of some who already enjoy easy access. We are working with the University of Glasgow to find another way of working together that will meet the aspirations that are laid out in the Kinnaird review for undergraduates to benefit from access to post-mortem material.

The Convener: I say with respect that undergraduates have to be sent out into all the conditions that they are likely to meet around the country, where we need to encourage them to take up posts. We cannot get private vets in the Highlands because people are dissuaded from doing large animal veterinary medicine. Vet training might be based in two places but, if students are to have the opportunity to find out what the rest of the country is like, they have to go out to it, so whether the vet service is close to the colleges is neither here nor there.

You need to give us a cost benefit analysis of what you propose. We have not heard that and that is the nub of the matter that we need to get to now. I am beginning to lose the point. There are a lot of questions to ask and time is short. We need to know why you have adopted this approach.

The SRUC has a track record on the issue. Back in 2003, it wanted to close Auchincruive and Thainstone and centralise things in Edinburgh. We were there at that time and we are seeing it happen again now, so give us your cost benefit analysis right now.

Mike Wijnberg: There is no doubt that we are under significant budgetary pressure, which has a bearing. In effect, 10 per cent of our budget is being withdrawn, which has undoubtedly had an impact on decisions that have been made. That is a reality that we have to face.

As for the service's infrastructure, we are thinking through the process in a slightly different way so that we can retain access to facilities in the areas that are covered at the moment. We will do everything that we can to retain a location where farmers can take animals to have a post mortem done. That is our current thinking.

We still believe that we can go some way towards doing that; we have not yet entirely finished the exercise. In the process, we are under pressure to find savings.

The Convener: I am not getting an answer on what the cost benefit analysis is, so perhaps Alex Fergusson should ask his question.

Alex Fergusson: You might also want to go to Mr Hume, convener.

A lot of the ground has been covered on the topic that I was going to ask about. However, with the best will in the world, there seems to be an element of putting the cart before the horse, especially given the amount of time between the publication of the Kinnaird report and the consultation. If we look at the situation in Inverness, it appears that the decision has been taken to make the changes that you put forward, yet the suggested alternatives, such as greater use of private vets, have not been tested. Brian, you said that local private vets have basically closed their minds to working further to improve that situation—I am horrified to hear that.

You have put forward a solution without putting forward the alternatives. Mike Russell is right: if people are aware of the alternatives and have confidence that they are going to work, they will be accepted, but the proposal that you have made is the reason for the angst and anger that are evident around the table.

Brian Hosie: We have worked through those plans. You are right to say that it took two years for the Kinnaird review to come up with the proposals. The cabinet secretary then set up the strategic management board, which is now in its fourth year of operation. We have come up with various proposals at the board's request and are being guided by the board on how we can adapt and modify the surveillance programme within the increasing budgetary constraints.

Members will see the financial figures in the documentation. We produce those figures for the Government on a quarterly basis as part of our reporting on the grant in aid that we get. We try to be open and clear and I am distressed by the suggestion that we are hiding something.

We receive significant amounts of taxpayer funds, which have been reduced so that we are now on a flat funding programme. In effect, that means further cuts. We have a network that was established many years ago and which is ragged at the edges and needs to be refreshed and enhanced. My staff and I have given many years of service to the SAC—I have given 32 years and many of my colleagues around the country have given up to 40 years or more—and we are distressed to find ourselves working at facilities that are well past their sell-by date. We need to make some hard decisions on the way forward.

People deride us for coming up with other suggestions because they do not like the idea of us changing. However, the reality is that we are working in extremely difficult circumstances. People are putting in well beyond contractual hours in an effort to hold things together.

Alex Fergusson: I do not doubt that. As you are well aware, I have shared many of your 30-odd years with you, in various roles.

Brian Hosie: Yes, I am afraid that you have.

Alex Fergusson: The point that I must make, although it has been raised already to an extent, is that if you want to bring in such changes, you must bring people with you. In order to do that, an acceptable alternative must be in place. I come back to the example of Inverness, but there are arguments around many of the other issues, such as Auchincruive in particular. I used to use Auchincruive a great deal—indeed, rather too much for my financial comfort. If the alternative had been to go to Glasgow, I do not think that I would have been doing that, given that I lived 25 miles south of Ayr. All of those arguments come into it. On the Inverness situation, which is the really big one here, the problem is that you are not taking people with you. It is as simple as that.

Brian Hosie: We accept that, and I think that I clearly recognised that point in my summary of the consultation. You are right that we have to think again.

The Convener: Before I bring in Sarah Boyack, Jim Hume has a question on annual budgets.

13:15

Jim Hume: Those who know me know that I come from a rural background. I still have nightmares about foot-and-mouth disease hitting the south of Scotland in 2001 and its impact not just on the economy and animal welfare but on the mental welfare of many farmers who are still suffering to this day. I am therefore totally opposed to what is going on today.

We have heard from the NFUS that there have been no details of a cost benefit analysis and no reference to alternative options that might have been considered. We have heard that private vets could be used to carry out post mortems but that they are united in their opposition to that.

Mr Wijnberg, you said that there has been a 10 per cent cut in the money from the Government, but up until 2011-12 there was no cut and, since then, £3,773,000 has been allocated every year by the Scottish Government to fund veterinary advisory services. Time and again, Mr Hosie has said that the aim is to improve services, but we are hearing that the changes are to do with cuts. Can we have an honest answer? Are the changes being made purely for financial reasons or to provide better services? If they are being made to provide better services, nobody here has yet heard how those better services will be delivered.

It would also be interesting to hear what will happen to the estate at Auchincruive and

Inverness. Will it be sold? Have you valued the estate? Is this a case of selling some of the silver to provide income?

Mike Wijnberg: We will answer your questions in two sections. I will sketch the bigger picture and Brian Hosie will respond specifically on the budget amounts.

Let me provide some perspective on the reference to everything that we are doing to provide better surveillance. The strong initiator is the fact that we are under budgetary pressures. Brian Hosie will talk about that in a moment. We have an opportunity to consider where we are with disease surveillance overall in Scotland—we have talked about the infrastructure being worn out, tired and needing to be reorganised or replaced. We also have an opportunity to consider some of the things that are going on internationally in disease surveillance.

There are opportunities for us to operate in a different way. In our epidemiology unit in Inverness, we have a world-class team that is not being fully utilised in the analysis of data—the active surveillance that we spoke about at the beginning of our evidence—and we should be using its services more. This is an opportunity for us to take stock of how things are being done and to take a slightly different approach; it is not about trying to take away the services that are provided locally. We are doing everything that we can to maintain those services while making the changes at the same time.

Brian Hosie: The budget provisions are in table 1 of the figures that the committee has been given. You will see that we had a £36,000 cut in 2011-12 and a further cut of £300,000 in the following year but that, since then, we have had flat funding. We were fortunate to be given supplementary income of up to £300,000-odd by the Government, but we have been told that we should not rely on those contingency funds going forward.

I should make it clear that we are told about the funding that we are going to get from the Scottish Government very much at the last minute before the new financial year starts. We normally expect to get the figures in November or December so that we could plan for the financial year starting in April. I do not know the figures that we will be working with in the next financial year and I understand from the press that we might well get that information quite late in this financial year. We are trying to work within those limitations. Those are the figures that are reported through the system.

Jim Hume: You get around £4 million per annum to fund veterinary advisory services. Is there not a risk that you will face an ever-decreasing circle if there is no vision of where you

are going? I do not think that we have seen a vision. If you are providing a lesser service to less of the country, is there not a risk that the Government may provide even less funding? I do not speak for the Government—I oppose it, of course—but are you not at risk of losing even more of your funding if you provide a lesser service to cover the country?

Mike Wijnberg: The one thing that we have had a good opportunity to do in the light of the responses to the stakeholder consultation is to take stock of our vision. Particularly as I take up a new role, I understand that it is incumbent on us to put ourselves in a position where we can articulate our vision much more clearly to everybody, taking into consideration the disengagement that there is from some of the veterinary surgeries and so on. We recognise that. We have a vision for where we are going and we need to communicate that intelligently in order to get broad engagement from everybody.

Jim Hume: Could you address the point about the fact that decreasing your footprint in Scotland risks decreasing your funding?

Mike Wijnberg: Part of our vision is to do everything that we can to ensure that the footprint does not decrease. We want to maintain the availability of the facilities to do post mortems—in other words, we aim to ensure that the man with a dead cow who has been used to being able to take it into a facility in Edinburgh or wherever to have it attended to will still be able to do that.

There are issues relating to the fabric of buildings and so on that we need to deal with. We believe that we can get some savings through a reorganisation of laboratory facilities and a concentration of know-how and the capital that is required to fix those facilities. That might be a direction of travel, as we think about these things in the longer term.

Jim Hume: Have you done work to value the properties in Auchincruive and Inverness for sale purposes?

Mike Wijnberg: We have an informal evaluation on the property in Inverness—in fact, we will have that for all our properties. Plus, we will also have estimates of the maintenance requirements for those buildings projected over the next 10 years.

Jim Hume: It would be quite interesting to see those figures, if possible.

The Convener: Next we have a member for the Lothians.

Sarah Boyack: My question is about how the responses to the consultation have changed thinking about the future of disease surveillance centres in Scotland. It has been interesting to listen to the conversation around the table.

Obviously, there is the challenge that private vets do not want to take over the work that you have suggested. I get the sense that people are working flat out to make the existing system work, and that that is not possible within the current financial envelope. However, that is the contracted position.

The work has been contracted to SAC Consulting. Given the strong responses, the knowledge around the table and what we have read in the submissions, I wonder whether the work is doable to people's satisfaction within the financial envelope. That is a question on which we could probably spend longer being unhappy with what we are being told. However, unless the financial envelope changes, or someone has some clever thinking about an additional plan that allows new investment in places that are currently not fit for purpose, I cannot see us being satisfied with any of the responses that we get today. I say that not as a Lothians member but as someone who is looking at the issues and is thinking about farmers, the private veterinary world, training for new vets and the crucial link between animal husbandry, health and welfare, and human health. Jim Hume's point about the disease outbreak in the early years of this Parliament is spot on. We can learn lessons from such an outbreak, but the financial and human costs at the time are massive.

It is rare for committee members to be so unified on an issue and I wonder whether we need to communicate our thoughts on this issue to the cabinet secretary. I was not expecting us to have this kind of discussion, but it has been quite useful.

The Convener: Those are fair points. From the point of view of my neutral role as the convener of the committee rather than as a local member in the Highlands, I think that it is important that the cabinet secretary engages with us on the basis of the discussion that we have had today and the views that have been put forward. However, it is necessary for the cabinet secretary to know about the access to services point and about what the strategic vision is. It is impossible for us to tell at this time exactly where this is all leading, except that it is a contraction of particular services that we have at present.

Michael Russell: There is some confusion about the overall roles within the organisation. I understand that the SRUC is not now going into a merger with the University of Edinburgh. It has absorbed three colleges, in which matter I have had some involvement. The relationship between the consulting arm and the academic arm is at times porous, one way or the other. There needs to be much greater clarity about the overall role of the SRUC—its overall vision and its contribution. As Jim Hume has indicated, money is going one way to do the veterinary work, which is entirely

legitimate, while money is going another way to college and academic work.

We need clarity about this because, although all institutions are under pressure—and I say to Brian Hosie that I do not think that anybody is criticising individuals—the best response to that pressure is not always to retreat from the periphery. The response to that pressure should sometimes be to ask how the organisation can reconfigure and look at its role in a different way. It is time that the overall vision of the organisation is expressed in a way that can be understood by Scotland.

The Convener: Do panel members want to make a final response. We are trying to finish by half past one.

Claudia Beamish: We have not touched on marine issues, which are a fundamental question. I need to ask those questions.

The Convener: Okay. We should do that.

Claudia Beamish: The committee has received two submissions on marine issues relating to the SRUC's brief and work: one from the Marine Animal Rescue Coalition and one from Whale and Dolphin Conservation. I will raise three points from those.

First, in their view, the reviews have had a terrestrial perspective but not a marine one. Next, there are EU obligations on marine issues that need to be honoured—I am in no way suggesting that they are not being honoured, but they need to be in future too. Finally, again highlighting the concern about Inverness, I note that the submissions suggest that the rapid response facility and the work on animal welfare issues in relation to the shooting of seals and strandings of other mammals such as whales, and post mortem analysis of those, are extremely valuable. There is a plea that retaining at least the post mortem work should be considered. That point is specifically in relation to marine animals and is not in any way to pre-empt the comments that have been made about terrestrial services that have been put forward by members. Do you have any comments on those concerns?

Mike Wijnberg: We recognise all the concerns that you have mentioned and we have met the Scottish Government. A different funding stream is associated with the marine strandings operations. There is a small team of three people who are involved in that. To date, they have used the same facilities that are essentially there to cover terrestrial mammals. We have one or two issues to work through, but we are working hard to make sure that we retain that team and the services that they provide in the area.

Brian Hosie: I will add that we have spoken to Marine Scotland, which is the funding body for that

work, and we have made clear that, given all the points that Ms Beamish has just made, it would be better to have a longer-term plan rather than the rather short-term one to three-year contracts that we operate under for that work. If we are to provide a long-term service, we need long-term funding. A succession of one to three-year contracts puts us at a disadvantage in that kind of planning.

Claudia Beamish: If you accept that the emphasis of the review was terrestrial, do you agree that that implies that there should be a considerable amount of further consultation on the marine aspects of this? You say that you have spoken to Marine Scotland but, as far as the way forward is concerned, if your business plan and your outlook do not take the marine issues into account, as one of the submissions has suggested, that is a cause for concern.

13:30

Mike Wijnberg: We recognise that the focus of the consultation has been on terrestrial animals—that is fair to say—but I emphasise that we are not neglecting the marine aspect. The work that has been done in that area has a lot of merits, whether in regard to EU commitments or the quality of information. If we allow ourselves to think a little bit further, we recognise the potential that exists in that area in terms of the interface with students, bringing people into that area and providing a broader role for the public. The marine aspect is probably being looked at as a slightly separate issue, but I emphasise that it is not being neglected.

The Convener: We have to finish soon, so perhaps we can follow up on some of the issues in writing, but Graeme Dey has a short supplementary on the marine budget.

Graeme Dey: You referred to additional funding from Marine Scotland. Which budget heading does that come under in the table?

Brian Hosie: It does not come under that one at all.

Graeme Dey: So the figures in the table are not an entirely accurate reflection of the income.

Brian Hosie: No. The figures in the table relate to the funding stream under the veterinary advisory service budget. We get grant in aid, as I have explained, and we get other income, which is fee income. Veterinary practitioners will pay a fee for blood tests, worm egg counts or post mortems at a subsidised rate. The funding comes partly from the laboratory fees and partly from the Government's grant in aid. Some aspects are fully funded by the Government's grant in aid. For example, the veterinary expertise that we provide

to the Government on new and emerging diseases will be fully funded. You mentioned work on wildlife crime. If there is police involvement, forensic pathology or appearances in court, that has huge costs, and those are fully funded by the Government.

Sixty-two per cent of our funding is through the veterinary advisory service stream. That is what the figures in the table relate to. That includes the grant in aid and the laboratory fees associated with that work. Thirty-eight per cent of our income is outwith that. It covers the marine strandings and the work that we do on health schemes and health planning, which we call commercial income. The testing on dogs, cats and horses is outwith the Government funding, but we make use of the facilities in order to give us greater flexibility in responding to a national crisis. We do those tests on a bigger scale and we engage with the community and support veterinary practices by giving them additional opportunities to add value to their visits by doing blood testing for health schemes and the like. We also give private farmers opportunities to add value to their livestock. I am sure that Alex Fergusson will be alert to that kind of thing, which involves giving health stamps and accreditation to enhance the value of the stock.

The Convener: We will value the opportunity to read your evidence. As you will have gathered from the discussion that has taken place, there are strong views; it is not personal in any way. We thank you for your evidence. There will be further discussions about the proposals with the SRUC and the cabinet secretary. Thank you for appearing before us and for understanding where we are coming from.

Our next meeting will be on 7 September in Portree, when we will begin taking stakeholder evidence on the Land Reform (Scotland) Bill. Like all committee meetings, that is a public event and tickets are available through the Parliament's website.

As agreed earlier, we will now move into private session.

13:34

Meeting continued in private until 13:55.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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