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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Monday 7 September 2015

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
26th 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:

Christian Allard (North East Scotland) (SNP) (Committee Substitute)
Rachel Bromby (Cawdor Estate)
Malcolm Combe (University of Aberdeen)
John Glen (Buccleuch Estates)
John King (Registers of Scotland)
Sarah-Jane Laing (Scottish Land & Estates)
Fiona Mandeville (Scottish Crofting Federation)
Andrew McCornick (NFU Scotland)
Peter Peacock (Community Land Scotland)
Andrew Prendergast (Plunkett Foundation)
Archie Rintoul (Royal Institution of Chartered Surveyors)
Pete Ritchie (Nourish Scotland)
Dr Jill Robbie (University of Glasgow)
Steven Thomson (Scotland's Rural College)
Andy Wightman

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Aros Centre, Portree, Skye

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Monday 7 September 2015

[The Convener opened the meeting at 10:03]

Land Reform (Scotland) Bill: Stage 1

The Convener (Rob Gibson): Fàilte do dh'Eilean a' Cheò. Good morning and welcome to the Rural Affairs, Climate Change and Environment Committee's 26th meeting in 2015. We are delighted to be here on the Isle of Skye, which lived up to its name as the misty isle on our way here—although it is clearing up now, just as we hope our evidence session will clear up people's ideas about land reform. The Land Reform (Scotland) Bill is our main business for today's meeting.

I thank all the witnesses who have travelled here to give evidence and all the members of the public who have joined us. The committee is pleased to have the opportunity to visit Portree, and we would welcome your feedback on this external meeting of the Parliament. You will find feedback forms on your chairs, along with copies of the agenda. Pens are available if you do not have one with you.

You can follow the bill's progress and all the committee's meetings on our website at www.scottish.parliament.uk as well as via our Twitter feed using the hashtag #landreformbill and our handle @SP_RuralClimate.

Before we move to agenda item 1, I remind everyone present to switch off their mobile phones, as they might affect the broadcasting system. However, committee members may use tablets for committee business; as the meeting papers are now provided in digital format, we are using tablets quite a lot.

We have apologies from Jim Hume, Claudia Beamish and Michael Russell. I welcome to the committee Christian Allard, who is substituting for Michael Russell.

Item 1, on the Land Reform (Scotland) Bill, is the only item on the agenda. We are looking at parts 1 to 5 and part 7 of the bill. We will be joined by three panels of witnesses, and I welcome everyone to the meeting.

The first panel consists of Malcolm Combe, lecturer in law, who will give evidence in an individual capacity; Andy Wightman, an independent researcher; Steven Thomson, senior agricultural economist with the land economy, environment and society research group at Scotland's Rural College; and Dr Jill Robbie, lecturer in private law at the University of Glasgow.

I refer members to the papers and the questions that we may wish to ask. I will start by asking Jill Robbie a question. She has suggested that the bill could be improved considerably and could be more easily understood if it were rejigged and shifted about, which would improve the ease of use for communities and landowners. I would like to get a few words from her on how we could do that.

Dr Jill Robbie (University of Glasgow): Thank you for the question. I state at the beginning that I think that the Scottish Parliament has done some fantastic work in the past couple of years in revolutionising Scottish property law, and I am happy to be part of the continuing process of land reform in Scotland.

I support the bill's stated policy objective of managing the land in Scotland for the common good. However, I have concerns about whether the bill will contribute to achieving that goal in the best way.

An important aim that the bill should seek to achieve is the provision of clarity and accessibility, especially as community bodies have to be able to use it. The bill is not structured in a very helpful or accessible way, and I have given examples of that in my written evidence.

Key provisions in certain parts of the bill are not put at the beginning of parts. For example, the key provision for the Scottish land commission is section 20, on the function of the land commissioners. The key section in part 5 is section 47, which is tucked quite far into the middle of the part, after provisions of lesser importance.

The structure of the specific right to buy in part 5 is similar to the structure in part 3A of the Land Reform (Scotland) Act 2003, as amended by the Community Empowerment (Scotland) Act 2015. I realise that consistency is important, but we should not just replicate complex structures that have gone before.

In connection with that point, the law on the community right to buy is now a complex area. I challenge a good lawyer to sit down and discover what the law is at present, with the 2015 act coming into force, and how to advise clients and community bodies on how to use those provisions. The fact that a lot of the detail needs to be filled in by secondary legislation does not help with the legislation's accessibility. If legislation is made complex and inaccessible, that produces a barrier to using it and increases the costs on

communities, because they will need to get legal advice.

The Convener: I will just say that not all the witnesses need to answer all the questions. If you want to comment on anything, you will need to indicate that to me, given the room's structure.

If everybody is happy with that as an explanation from Jill Robbie, we will move on to an area that is more common to all the witnesses: the land rights and responsibilities statement. Graeme Dey will lead the questioning.

Graeme Dey (Angus South) (SNP): Good morning, everyone. How might the proposed provisions be improved? For example, should reference be made to international obligations on land and human rights? Should the land rights and responsibilities statement require to be debated and endorsed by the Parliament?

Malcolm Combe (University of Aberdeen): Good morning. Thanks for inviting me along and for giving me the opportunity to speak.

In my submission, I drew an analogy with the access code that comes under part 1 of the Land Reform (Scotland) Act 2003, which I hope that most people would agree has been relatively successful. It was put before the Parliament and approved, and it was drafted in consultation with Scottish Natural Heritage. It seems to be working quite well.

Having something approved by Parliament might give it a bit more clout—to use a technical term—which might be preferable. If the statement was in the legislation, that would give it a certain cachet that it would not have if it were external to the legislation. However, in that case, it might be trapped by the legislation, which could make it trickier to amend in the future.

The answer depends on the nature of the statement. If it is to be hard and fast, legislation might be the best place for it. In that case, it should at the very least come before Parliament, and Parliament should be required to consider it before any changes are made to it. There is a tension there. The committee would need to decide what the purpose of the statement is and proceed accordingly, if that makes sense.

Andy Wightman: It is important that the statement stands on its own and is not in any bill, because it will need to be amended over the years. In my submission, I drew attention to the fact that a growing number of countries have national land policies. That is part of good governance. Normally, such a statement would be included in a national land policy.

It is fundamental that the statement is endorsed by Parliament, but I also believe strongly that the statement should not be a statement of Scottish ministers' objectives for land reform; rather, it should be a statement of land rights and responsibilities that is endorsed by Parliament, and it should have as wide an endorsement as possible. It should include a requirement to draft the national land policy, because I see this as the start of a process whereby we can develop a national land policy.

Dr Robbie: I agree with the comment that Andy Wightman just made. The statement should have as wide an endorsement as possible. A topic such as land reform affects everybody in Scotland, and we should aim to get as much debate, input and engagement as possible from everybody. Parliament is one of the best places to do that.

Steven Thomson (Scotland's Rural College): Jill Robbie and Andy Wightman make important points. The SRUC thinks that it is essential that the statement is endorsed by the Scottish Parliament, because that will give it transparency. We want the policy to be transparent because otherwise, as Andy Wightman said, it will involve ministerial decisions, and ministerial decisions are sometimes clouded in subjectivity and party politics and are not open to the public to debate in a way that would enable the public to see how the decisions were formulated.

We certainly want the statement to say not just what the objectives for land reform are. As Andy Wightman suggested, that part is likely to change through time. It is also key that the guiding principles on future governance of, support for and regulation of our land are set out.

The Convener: That deals with that section. We will move on to the proposed land commission.

10:15

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning to everyone who is in the hall. It is good to see such a good turnout in my constituency.

The bill proposes the establishment of a Scottish land commission. The body's title does not reflect the proposal in the consultation and last year's report that it should be called the land reform commission. Is it important to have the word "reform" in the title? Does the word have any significance, given that land matters will never at any one point be resolved absolutely and there will always be a need for continual reform?

Steven Thomson: I certainly do not think that the word "reform" is needed in the title. The commission's role should be about the governance of land and the oversight of land issues, whether or not that is part of a reform process. According to the bill, the commission will deal with any policy on land. Why include "reform"

in the title? That would perhaps stymie the commissioners' ability to deliver on wider issues into which they might have insight.

Andy Wightman: It is important that the Scottish land commission takes a lead on many topics that concern land reform, but it would be misleading to call it a Scottish land reform commission. I would support leaving it as the Scottish land commission.

As I suggested in my written evidence, the commission should also be responsible for developing a national land policy. It should follow international best practice, as has been set out in the United Nations voluntary guidelines on the responsible governance of tenure. I see the land commission's job as taking quite a broad, in-depth overview of land policy. Much of its work will be concerned with proposals and ideas around land reform, but that will be a subset of its responsibilities.

Malcolm Combe: I have two quick points. First, if including the word "reform" in the title was so inflammatory that it left some people not keen to engage with the new entity, that would be a problem. Therefore, the path of least resistance would seem to be to call it the Scottish land commission.

Secondly, to make an analogy with another jurisdiction, the post-apartheid constitution in South Africa recognised that land reform is part of the public interest. Obviously, that country has a completely different social setting and different social pressures, but it is committed to that.

To go completely against what I just said about the inclusion of "reform" in the title being inflammatory, if the bill said that that is what the commission is about and that is the recognised policy that it is getting at, that would be fine. In that regard, having "reform" in the title might be a good thing.

The Convener: The Irish Land Commission in the 1920s was very political. It did not have the word "reform" in its title.

Malcolm Combe: Quite.

Dave Thompson: Thank you for those answers. Should there be a requirement to integrate the commission's work with the land rights and responsibilities statement and other land use policies and strategies, such as the land use strategy? Should the range of expertise and experience that it is recommended that the commission should have be expanded to cover, for example, Gaelic, land management or forestry?

Steven Thomson: In our submission we suggested that, akin to what Andy Wightman said, the commission should develop a wider land policy over the next period. It is that land policy, rather than the LRRS, that would bring together in a much more holistic and integrated manner all the policy strands.

We have to be honest. We have relatively competing policy signals and priorities for rural areas. At times, we have policy conflict, so having oversight of that and pulling the issues together coherently might be a useful job for the commission.

Malcolm Combe: I will make two points. I would be perfectly happy with the commission's work being integrated with things such as the Scottish land use strategy. On whether other things should be built into the statute that Scottish land commissioners have to abide by, beyond the six items that are listed in the bill—that list is not exhaustive; other things can be taken on—the bill might not need anything else, but I suggested in my written evidence that Gaelic might have a bigger role in the bill.

An analogy might be drawn with the Scottish Land Court Act 1993 and the Crofters (Scotland) Act 1993. The latter requires a crofting commissioner to have knowledge of the Gaelic language. Such knowledge would have benefits for land commissioners' understanding of what the land is about and their ability to unlock place names and things like that. That may be a less tangible benefit. Requiring commissioners to have a knowledge of Gaelic might have benefits for the language—I know that that is not necessarily what the Scottish land commission is for, but it could be a positive step to have Gaelic involved. Arguably, some of that is built into the Gaelic Language (Scotland) Act 2005 but, to be consistent with the two 1993 acts that I mentioned, it would be good to have Gaelic included in the bill.

Andy Wightman: Given that I believe that the Scottish land commission should be responsible for developing a national land policy, I think that the land use strategy should be part of that. We have suffered since devolution in having a very ad hoc approach to land matters. That is why I am particularly pleased to see the land commission proposal.

There are areas of neglected policy. I highlight the question of common good, which has not been subjected to enough detailed scrutiny and needs quite a lot of reform. That is the sort of forgotten-about topic that falls between ministers' responsibilities and which the land commission could effectively pick up, draw attention to, do work on and integrate with other Government policy. The integrative function is critical, because one of the commission's purposes—in my view—is to identify pieces of Government land policy that conflict, such as housing and fiscal policy.

I am relaxed about the expertise requirements that are laid down in the bill. The body will be quite a high-level commission that deals with complex areas of policy. It will obviously need to draw on expertise from those who own and manage land, whether the expertise is in housing, factories, rivers, harbours or whatever. There could not be a special place for any particular expertise, because there are dozens of areas of expertise when it comes to land.

Dr Robbie: I agree with the other witnesses that there should be a co-ordinated response in the statement, which should take into account other documentation.

In relation to the land commissioners, a notable exception from the factors that are listed in section 9 of the bill is experience in land management. Although Malcolm Combe said that we can take other views into account because the list is not exhaustive, I do not think that the bill should provide a list that blocks out people who should be a main part of the process and the collaborative response to land reform.

I endorse Malcolm Combe's comment about Gaelic. Including that in the bill would show a commitment to having a diverse group of people on the commission. On that point, there should be regard to having people from different areas of Scotland on the commission, so that there is local input from different areas.

The Convener: There is a supplementary question from Graeme Dey.

Graeme Dey: How detached from Government does the panel feel the commission and commissioners ought to be, and how should they be interacting with Government in practice?

Andy Wightman: There is some discussion of that in the policy memorandum. I do not recall all the detail, but my recollection is that the Government is trying to set up the commission not as a full independent commissioner like the human rights commissioner or the freedom of information commissioner, but at the same time not just as another bit of Government, as it were.

It is extremely important that the commission has autonomy, a clear statutory role, clear statutory reporting requirements and clear statutory responsibilities to consult. In my view, part of the benefit of having such a body will lie in its ability to take both a deep and radical perspective on land—a strategic approach to it—and one with medium and long-term time horizons. Therefore, it needs to be sufficiently removed from the day-to-day concerns of the Scottish ministers.

Steven Thomson: In our submission, we said that we supported the commission and the commissioners being independent. They must be seen to be independent of Government and of ministers, although they will have to report to them. We think that that is essential in order to get buy-in from all parties and to ensure that they engage with the commission.

I return to the point about skill sets. We thought that one of the key criteria should be that the commission should have on it at least one person with practical experience of land management, whether in aquaculture, housing or whatever. There should be someone on the commission who has a practical rather than a purely academic or institutional background.

In relation to Gaelic, I know that we are on Skye, but we must be careful that we do not alienate the south of Scotland, so the role of Scots should be considered. If a language requirement is to be built it, we should not alienate parts of the country by limiting it to Gaelic.

Dave Thompson: I take that point, but the difference is that there are far fewer Gaelic speakers than there are speakers of Scots—it is a much more limited pool. It would be far more likely for a commissioner to understand Scots even if they did not speak it, although many people in Scotland do not realise that they speak Scots; they think that they speak a slang form of English. However, that is a whole other debate.

The Convener: Indeed, it is, but it is germane.

The policy memorandum says that it expects the Government to suggest things to the commission to investigate but, as Andy Wightman said, it should have sufficient independence from the Scottish ministers to determine its own programme of work. It is a case of having a balance between the Government in power at the time and commissioners with a longer-term view. We will find out what other people think about that as we proceed with our evidence taking.

Sarah Boyack will lead on the issue of information about the control of land.

Sarah Boyack (Lothian) (Lab): I welcome not just those in the room but everyone who is watching the broadcast of the meeting.

A key statement in the policy memorandum is that there is a clear public desire for greater transparency, and that is certainly backed in the responses that we have received. The issue is how we might achieve that. I have some questions that are for Andy Wightman and Malcolm Combe in particular, because they submitted detailed comments on the principle of transparency and how we can achieve it.

Do you agree with the restriction on ownership of land to European Union-registered entities not being included in the bill even though it formed part of the consultation? Do you think that the

proposed provisions match the ambitions of the fourth EU anti-money laundering directive and the United Kingdom Government's recent comments about moves to reveal who company owners are? Will the bill help to lead to a reduction in the amount of Scottish land that is held in tax havens?

10:30

Andy Wightman: I do not agree with the exclusion of the provision that any corporate or legal person must be registered in the EU, which was proposed back in December. I think that it should be in the bill. I do not think that what is in the bill matches the ambitions of the UK Government or of the Prime Minister, David Cameron.

Sections 35 and 36 should be deleted: they serve no purpose. They are both regulation-making sections. Section 35 allows people to ask questions and section 36 allows the keeper of the registers of Scotland to ask questions. The answer to those questions may simply be a two-word rude answer. The governor-general of the British Virgin Islands is under no obligation whatsoever to reveal any of the information that those sections seek to reveal. The only circumstances in which the Grand Cayman and Panamanian authorities would be obliged to reveal information would be when a criminal inquiry was under way and criminal actions were being investigated. There are international agreements to do that.

That approach will not lead to any greater transparency. It is bizarre that there is a section that says that people can ask questions only if they have good reason to ask them. In a Parliament that has passed freedom of information legislation and has otherwise been very supportive of transparency, the idea that only certain classes of people can ask what appear to be deemed to be awkward questions is frankly bizarre. The powers of the keeper in section 36 are powers she already has. She can ask those questions if she wishes; the section just gives her a statutory footing to do so, and there is no reason to anticipate that she will get any answers.

Malcolm Combe: I was an adviser to the land reform review group back in the day, even before the initial consultation exercise. I had become comfortable with the idea of a restriction on non-EU entities owning land in Scotland, and I am still comfortable with that. I have not changed my view. Could what is in sections 35 and 36 be effective in reflecting what the land reform review group proposed? The answer has to be in the negative. I do not think that it would.

In my evidence, I suggested some things that might beef up sections 35 and 36, but that was not meant to imply that we should completely forget about the restriction on non-EU entities; rather, I was suggesting alternatives should the committee not agree to it. For example, if someone were not to interact with the community, I suggested that the land could be deemed to be abandoned in terms of the provisions introduced by the Community Empowerment (Scotland) Act 2015. That would lead to the potential of an asset transfer. Obviously, any proposal would have to meet the sustainable development test and there would be full compensation, but lack of interaction would have a consequence that, as Andy Wightman mentioned, might not currently be provided for in sections 35 and 36.

Sarah Boyack: That is a really helpful clarification; I would like to tease out some more information.

If there were an obligation to answer questions from the keeper on the face of the bill, what might the sanctions be for non-compliance? Andy Wightman made the point that individuals could have the power to ask questions but might not have them answered, so what about sanctions related to common agricultural policy payments or grants? To what extent would answering questions be a legal requirement if there were sanctions on the face of the bill? Would that help in making sure that there was clarity and certainty from the start so that people would know where they stood and that, when the keeper asked a question, it would be answered?

Andy Wightman: I have not thought about this, but there are potentially sanctions that the Scottish Parliament could consider putting in the bill to cover the circumstances when the keeper asks a question and does not get an answer. However, that seems a rather clumsy way of going about public policy.

The intention of the original proposal goes back to the land reform review group—indeed, I made the suggestion during the passage of the Land Registration etc (Scotland) Act 2012. The purpose here is to end secrecy. The simplest way to eliminate secrecy jurisdictions from Scotland is to make it incompetent for them to hold title—end of story. If you do not do that, you will get into crazy situations in which you have to devise sanctions that may or may not be lawful. For example, if you tried to introduce a sanction in which you withheld payment of EU agricultural subsidies, that would probably be unlawful. You would get into the whole complexity of EU law and whether you can discriminate.

There is also the issue of who has not answered the keeper's question. The entity that has not answered the keeper's question is the registry of the British Virgin Islands, but that registry is not the body that would suffer the keeper's sanction. It is a crazy line to go down, and I suggest that you

should just get rid of sections 35 and 36. It is better to have nothing on the issue than to have a complex provision that will not deliver anything other than providing a fig leaf for Government to say that it is doing things. Frankly, it is an embarrassment.

The UK Government is committed to transparency and beneficial ownership registers. Just last week, all the offshore information was published in England and Wales. Scotland should be leading on this issue. The big benefit of keeping out the offshore tax havens is not just transparency, accountability and doing our bit to help prevent tax avoidance; it is leadership. If the UK Parliament were to pass a statute that prohibited offshore tax havens owning property in London, it would be dramatic and extremely useful. The Scottish Parliament could provide leadership in this context on a UK basis.

The Convener: Angus MacDonald has a supplementary question, but Jill Robbie wants to comment first. We will then come back to Sarah Boyack and perhaps to me, too.

Dr Robbie: The land reform review group identified a particular problem, and a clear, concrete solution was provided to address it. The recommendation has not been accepted in the bill, and what we have is a very vague concept that needs to be filled in and, as Andy Wightman has highlighted, there are failings in the effectiveness of fulfilling the goal of the policy. It is good to raise those concerns.

I make the point that certainty, transparency and publicity have been, and still are, important principles in Scottish property law, but not all publicity is good publicity. If you can get access to documents electronically, at low cost and quickly, it means that a vast range of information can be obtained in an instant: names, dates of birth, addresses, previous addresses, whether there is a security on a property, which bank holds that security, images of signatures and so on. It is the ideal environment for the misuse of such information. In England there have been cases of people requesting documents so as to obtain the signatures in order to fraudulently transfer the land.

We are constantly reminded in our personal capacity not to publish sensitive information online, yet now, with the completion of the land register, more of that information is going online and will be accessible. With that background, we still need to balance the interests of transparency and publicity against the interests of privacy and the protection of landowners' data. By landowners, I mean not just people who own a Highland estate but those who own a terraced house in Dundee. We should take that into account.

If sections 35 and 36 stay as they are, the regulations that come from them should carefully consider that balance. Having certain restrictions on information does not mean that the Government does not have access to that information in order to inform research and statistical information on land ownership, but it does mean that the information will not necessarily fall into the wrong hands.

The Convener: That is an interesting point of view.

Angus MacDonald (Falkirk East) (SNP): Good morning everyone. Taking on board Jill Robbie's points, I want to go back to Andy Wightman's comments. He mentioned that, during the passage of the Land Registration etc (Scotland) Act 2012, during consideration in the Economy, Energy and Tourism Committee the Government had the same position on non-EU entities as it holds just now. Clearly, the Government's stance is in contradiction to the situation in Denmark, where there is a presumption that the landowner has to stay in Denmark. If the Danes can do it, why can we not? I would be interested to hear the panel expand on that.

Steven Thomson: To go back to a point that Andy Wightman referred to, in our evidence we suggested that it seems strange to have a provision to allow the keeper to ask for voluntary information unless there is a sanction to back that up. Ultimately, the only sanction that there could be is refusal of registration of the title. However, it seems strange to have the provision if there are no powers to act.

On the point about the EU, to go back once again to the December consultation, we strongly made the point about whether there is any evidence that a restriction to EU entities would provide any benefit in finding out who the owners are. The answer is probably no, because the EU still allows for people to be hidden away through companies. I am not convinced about that point and I do not think that my colleagues would be convinced that the provision is necessary. We also have to remember that some landowners that are not registered in the EU actually benefit communities significantly. They bring in significant sums of money from outwith the EU and invest it in local communities.

To go back to Sarah Boyack's point about whether there could be penalties on CAP payments or grants, given that I spent two years working with Brian Pack on trying to reduce red tape in the CAP, I suggest that that might not be a useful way forward because, if we introduced a cross-compliance measure on such things, that would be against the EU principles on CAP payments.

Andy Wightman: I want to respond to a couple of things that Steven Thomson said.

It is important to bear in mind that, if the original proposal was reinstated, that would mean that any legal person owning land in Scotland would have to be registered in the EU. The EU has passed legislation on registers of beneficial ownership, and that is already in statute in the UK in the Small Business, Enterprise and Employment Act 2015. If a corporation is set up in Italy, even if the shareholders are in the British Virgin Islands, there will be a legal requirement to register beneficial ownership in Italy. There are even problems with that, because it is difficult to ascertain whether those who declare themselves on the beneficial register are in fact the correct people. However, this is all part of a journey that we are on, and my criticism is that drawing back from a meaningful first step in the journey seems rather bizarre.

Another important thing to emphasise to the committee is that we should be in absolutely no doubt that nothing in the proposal in December would restrict anyone anywhere in the world from investing in Scotland. It is not about restricting foreigners owning land in Scotland; all it is saying is that, if a woman in Bolivia wants to buy a house in Edinburgh through a corporate vehicle, that corporate vehicle has to be registered in the EU.

Indeed, that is what big investors in Scotland do. When big Japanese and American corporations acquire land in Scotland to build factories, they set up UK subsidiaries. That is the sensible thing to do in many cases. There is therefore nothing odd about such an approach, and it would certainly not restrict foreign investment. It would just place a requirement on people to register their interest in the EU.

On the question that Angus MacDonald asked about absentee landowners, I am not sure whether he is asking whether all owners should be resident. We can talk about that, but there is nothing in the bill on absentee ownership. However, by definition, a corporation that is not registered in Scotland is absentee. I am not sure whether that is part of the question.

Sarah Boyack: The answers have been useful in relation to the choice on what is put in the bill. Is it important to let ministers make regulations after the bill is passed, or should the substantive provision be clear and on the face of the bill so that, when we test it, it has the support of the whole Parliament and we can interrogate it? What are your views on the choice about what is up front and in the bill versus what is done subsequently by regulations at some point?

Andy Wightman: It should be on the face of the bill: any such provision should be in primary legislation. That is the case with the Small Business, Enterprise and Employment Act 2015, and various statutes that deal with transparency and tax evasion are in primary legislation rather than regulations.

10:45

Dr Robbie: I have quite a strong view on that. A lot of provisions seem to be absent from the bill, and it is therefore difficult to have a discussion about it. It would be great to have provisions in the bill so that, as soon as they are set down, we can start to have a discussion. I did not want to keep on reading in the bill that ministers can make regulations.

To include such provisions would not only help us to have a debate about the bill but improve its accessibility. Anybody who has tried to find the most up-to-date statutory instrument on anything will appreciate that it is not an easy task. If we can get those provisions on the face of the bill, that will help with the accessibility aspect.

The Convener: Malcolm Combe?

Malcolm Combe: I agree with what Jill Robbie said.

Steven Thomson: I concur with what has just been said. There may be some nervousness at the fact that ministers could consistently change the regulations without going through parliamentary scrutiny. Again, that comes back to the issue of transparency.

To go back to Angus MacDonald's question about Denmark, part of the reason for those rules relates to land taxation issues. In order to become a farmer in Denmark, one has to have qualifications. Denmark has a different set of rules and standards that we could perhaps look at.

Sarah Boyack: Those answers are really helpful to us. I have one final question. Are you aware of examples of where access to publicly available annual returns and accounts, including the names of beneficial owners, would have benefited the sustainable development of communities?

Andy Wightman: Off the top of my head I cannot think of specific examples, but I have been involved with communities and individuals for 30 years in dealing with these matters. In a small number of instances—which were nevertheless important for those people involved—there was a degree of frustration at not being able to find out who really controlled the land.

Finding out who owns land is not a problem; that information is in the register of sasines or the land register. It may be difficult to find, but you will get it eventually, and in most instances you will get it quite quickly, and you will get a name.

I was working with a community in Ayrshire recently on trying to find the owner of a bit of land. The last deed was recorded in 1942, and the owners were named at an address in what was then Rhodesia. We have absolutely no idea who these people are now, or even if they are alive.

The bigger problem with land registration is that there is no requirement to update the register with a current address and location. The land register is designed as a place to secure property rights, not as a place to find information on who owns the land and how one might get hold of them. That is why we should have a much wider land information system, but that is another issue.

I recall that the committee was in Orkney recently hearing evidence about problems in Gills Bay, which were not to do with offshore tax havens. I remember Paul Wheelhouse, when he was Minister for Environment and Climate Change, telling the committee about his six-month odyssey—it might have been six years—as a community councillor trying to find out who owned a bit of land in Eyemouth. As I recall, it eventually turned out to be a member of some ancient European royal family.

Take it from me—communities and individuals come across these problems on a reasonably regular basis, but they do not make a big fuss about it. Frankly, they just give up. That is why it is absolutely fundamental that we have some of this debate about transparency and information and why it is important for Parliament to make progress on it.

The Convener: Is it within the Scottish Parliament's competence to bar non-EU-registered entities? After all, there has been a bill at Westminster to deal with the situation in England and Wales, but does the Scottish Parliament have the same powers?

Andy Wightman: In my view, Scottish property law is clearly devolved and land registration law is part of that. The original proposal was to make it incompetent to register title in land if it did not meet certain criteria; that is strictly part of registration law, which is part of property law, all of which is devolved.

There might be consequential issues around European treaties such as the treaty of Rome and those to do with discrimination and human rights, but I do not think that they arise here. In my view, this is wholly within devolved competence. It is my understanding—Malcolm Combe will correct me if I am wrong—that those under 16 cannot take title to land, and it used to be the case that firms could not do so either, although that was changed by the Abolition of Feudal Tenure etc (Scotland) Act 2004. There is therefore a history of saying to those who want to record a title in the registers, "Here are the requirements that you have to fulfil," and this would be merely one other requirement.

Malcolm Combe: In the 2014 land reform review group, I managed to get into a position where I was comfortable that a restriction could operate on non-EU companies that would not breach, for example, article 14 of the European convention on human rights, which relates to discrimination. I was also comfortable that a restriction on non-EU companies could work with regard to capital movement across the European Union. I am not aware of anything that has happened over the past year to change my view.

On Sarah Boyack's question whether we know of situations in which offshore ownership has caused problems, I know about one situation anecdotally; one of Jill Robbie's colleagues, Dr Dot Reid, recently tweeted that a bit of land near her is owned by a British Virgin Islands entity that does not answer any letters. So there you go.

The Convener: Thank you. Graeme Dey has a final supplementary on this issue.

Graeme Dey: Looking at this issue from as objective a standpoint as you can, can any of you think of a single valid or significant reason for not having the clear requirement regarding non-EU entities that was originally proposed?

Andy Wightman: I am sorry—what was the question again?

Graeme Dey: Can you think of any valid reason not to do this?

Andy Wightman: Not to do what?

Graeme Dey: Not to have a restriction on non-EU registered entities.

Andy Wightman: Is there any good reason why the December proposal should not have been taken forward?

Graeme Dey: That is right.

Andy Wightman: No. In fact, the failure to include it flies in the face of progress that has been made at UK Government and EU levels. As for the direction of travel globally—and we must remember that this is a global concern, which is why it was raised at the G8 summit—we need only think about the volume of illicit money that is flowing around the world, much of which we now know is being laundered through offshore tax havens and property. I have anecdotal evidence of dirty money coming in through the wind farm industry in Scotland, people arriving with briefcases full of money and so on, and the Metropolitan Police and most EU countries recognise that this is a serious problem. The whole direction of travel is about increasing transparency, visibility and accountability, and we, too, should be on that journey.

Malcolm Combe: It has been argued that a non-EU restriction would result in a flight of these assets into EU-registered, EU-incorporated or EU-declared trusts, but I am not sure that I find the argument very convincing.

Andy Wightman: On the issue of trusts, which is mentioned in the policy memorandum, I note that trusts law is fully devolved; indeed, the Scottish Law Commission has just prepared a new bill on the matter. Trusts are not as transparent as companies, but trustees are named in land registration documents in the section on proprietorship, and you can also find the original trust deeds. The original trust deeds of any trust incorporated in Scotland are in the books of council and session, so you can find out who the original trustors and beneficiaries were. You can do the same across the EU; the information is not as easy to find as that for companies, but you can find it.

The Convener: Why did you and others submit an evidence paper to the Scottish Affairs Committee in London on this very subject if it was within our competence to deal with the matter? You were looking for the Westminster Parliament to deal with the closed nature of trusts and the lack of information.

Andy Wightman: That was to do with company law. The Small Business, Employment and Enterprise Act 2015 set up a beneficial register of ownership of companies but not trusts, and we feel that it is important that trusts be included in that register.

The Convener: The UK Government refused to do that because, as the report said in March, it would take a fundamental change in UK law to reveal the owners of trusts.

Andy Wightman: It would require a change in English law. The Scottish law of trusts is devolved.

The Convener: But it is similarly about revealing who the trustees are.

Andy Wightman: Well, I do not know what the law on trusts in England is or the extent of disclosure at the moment. What I do know is that the trust deeds for any trust that is set up under Scots law are, almost without exception, registered in the books of council and session. That is a dusty legal tome in Registers of Scotland—it is not the kind of thing that you would trip over on your daily travels—but the information is there.

I am not downplaying the fact that there are big challenges at the UK level; I am making the point that those challenges are slowly being addressed—although not as fully as I would like—and I cannot understand why we are not doing all that we can to co-operate fully with that effort.

The Convener: Thank you for that. Let us move on to the subject of engaging communities in decisions relating to land. Alex Fergusson will lead on that area.

Alex Fergusson (Galloway and West Dumfries) (Con): It is perhaps a slightly more mundane subject than suitcases full of cash being brought into the country for the purposes of wind farms. Nonetheless, it is an important one in relation to the bill.

None of the evidence that I have read or heard suggests that anybody has a major problem with the general principle of engaging communities in decisions relating to land. However, the committee has a bit of a problem with it, which was highlighted last week. It comes back to two words that have been mentioned quite a lot already this morning, clarity and certainty, as there seems to be a considerable lack of both of those qualities in part 4. Indeed, as Jill Robbie says in her written evidence,

"there is little indication on what the guidance issued under these provisions will contain."

For me, that is a real issue for how we go about scrutinising the bill. Several of the key concepts in the bill are not clearly defined, which gives all us members a bit of an issue when we try to drill down into the impact that the provisions will have. Nonetheless, there will be a process of engaging with communities, and it is important that we examine it as best we can.

How do you feel the Government could ensure that the guidance, which I understand will not be mandatory, is compliant with other guidance on land management? Do you think that sanctions should be imposed, and what sort of sanctions could be imposed if the guidance is breached?

11:00

Andy Wightman: I welcome that principle being in the bill. Guidance is useful and, as you say, there has been strong consensus around it. You make some good points about the lack of clarity about what should be in the guidance. There could be a lot more in the bill about that.

However, guidance is guidance and, beyond saying what the guidance should broadly be about, the bill cannot be prescriptive about what should be in it. There are a number of examples of statutory guidance that has been passed by Parliament, perhaps the most notable of which in this context is the statutory guidance on access to land under part 1 of the Land Reform (Scotland) Act 2003. That guidance is extremely extensive in its detail, although there is not a great deal of detail in the 2003 act about what should be in the guidance. It was clear that the guidance needed to be detailed if people were to be able to exercise

their right to responsible access effectively, as responsibility had to be defined in all circumstances.

I am quite relaxed about the issue. It is a genuine concern, but I am relatively relaxed about it because I think that the guidance will be broadly supported by all parties and that therefore there will be an intent to make it as effective and as detailed as possible. However, I do not think that you can get round the conundrum of the bill being clear about what should be in the guidance and the guidance itself being non-statutory.

Malcolm Combe: The classic answer is that the devil will be in the detail. However, to go back to what Andy Wightman was saying on a different point, this is a step in a certain direction, and if the direction is toward more engagement, it is a positive step and I would be minded to say that it is a good thing.

Alex Fergusson: I absolutely agree that the devil will be in the detail. On that basis, do you think that, when the guidance is forthcoming, it should be endorsed by Parliament, as that would give Parliament another opportunity to scrutinise it?

Andy Wightman: Yes. As far as possible, all statutory frameworks—secondary legislation, guidance and so on—should be endorsed by Parliament, which should have the maximal opportunity to scrutinise those frameworks.

Alex Fergusson: That leads quite well to the next question that I want to explore. Let us say that there is guidance that has been scrutinised by Parliament. How do we then ensure that landowners engage with communities? Once they have consulted communities, how do we make sure that they take that consultation into account when they make decisions that relate to land? How do we follow that through in an effective way?

Andy Wightman: I am against legal frameworks that try to be overly prescriptive about people exercising their private rights. I think that part 4 of the bill is an attempt to move towards building up a greater degree of trust in those who have the privileges and the responsibilities of owning land but whose decisions also impact on others. Clearly, many people in that situation exercise those responsibilities very well at the moment and always have done, while others do so less well. There are others who are difficult to assess—going back to part 2 of the bill—because we have no idea who they are.

In my view, this is part of a journey of building up trust. At least at the outset, I would be reluctant to try to prescribe sanctions or means of ensuring that people do things. I would be inclined at this stage to develop robust, good-quality guidance, for which there is plenty of previous material to draw on, not just in the UK but overseas, and see how it works out.

Malcolm Combe: Politicians and councillors will know that, in public law, there are plenty of times when you need to consult and you need to pay attention to what people say in the consultation.

If you were trying to encourage landowners to respond to a consultation by absolutely and definitely taking on board what was said in the engagement process, part 4 would become something else—something that is more about the sanction or the carrot and stick. What do you want it to be? If it is to be, as Andy Wightman says, a first step that is about opening up a dialogue, it is proper at this stage that you do not hit people with sanctions for non-compliance because, if you do that, the consultation becomes something else.

Steven Thomson: The guidance and how you encourage landowners and communities to engage are an important part of the bill. Whenever we talk about guidance, I refer back to when, not long after I started at what was then called the Scottish Agricultural College, the Scottish Government published a whole raft of best-practice guides on community development and so on. I would say that those guides are probably still sitting on shelves and that not many people will have read them or engaged with them. Therefore, best-practice guidance sometimes does not help, and having it certainly does not mean that communities are more empowered.

You can give somebody guidance, but they still have to take that forward and feel as if they are empowered. As the bill is set out, the communities that are already doing things are likely to be the ones that benefit most, whereas those that do not already have the capital base to take things forward are going to get left behind. In our written submission, we call that a “Darwinian development”.

On the issue of getting landowners to consult communities, I come back to the question about what scale of management we are talking about here. That is the fundamental question about this part of the bill that is not answered. If somebody is going to plant trees, they probably already have to consult. If a plantation is going to be over a certain size, it will have to go through the Forestry Commission. If somebody wants to build a house, they have to consult through planning legislation, and so on. A tenant farmer already has to go to the landowner and to the planning authorities, and now they will also have to go to the community.

If it is a planning issue, communities already have an opportunity to engage, in that they get a response to planning applications. There are opportunities for consultation on some of the land management decisions that are going to impinge

on communities. The day-to-day management of land should not be part of that process, and we have to be explicit about that. We cannot have interference, as Andy Wightman would say, with private matters that are of a daily business nature and are to do with how people run their businesses. It is important to nail down what types of management activities we are talking about.

Alex Fergusson: Again, that leads me neatly into my final point on the subject. I absolutely agree with what has just been said. It is a point that I put to civil servants last week, when I asked them straight out about the concerns that have been raised with me in my constituency as to whether this would impact on day-to-day farm management decisions. We did not get a clear answer, but they agreed to come back in writing and we will see what they say. That is why I am keen to see more definition. Do you think that there is a need to manage expectations to a certain extent? On one side, some people believe that land managers will simply have to tell communities what they are going to do and, on the other, there will be communities expecting that they will now be consulted on every day-to-day land management decision that is taken. That is why I believe that we need more clarity, because that level of uncertainty is not helpful to anybody at this stage.

Andy Wightman: As I said earlier, it is important to try engaging communities and just see how it goes, without being too prescriptive. However, one of the most important parts of the guidance will be on the question simply of engagement—not consultation or involving communities in day-to-day decisions, which would be patently ridiculous and is not being proposed by anyone. If it gives any comfort to those who fear that, I would have no problem with putting a statement in the bill to the effect that the guidance does not relate to day-to-day business arrangements.

One of the most important things that the bill can do is to encourage a climate of engagement, and that is just about talking. It is about talking at strategic level about the future, and about communities being entitled to a minimum level of discussion about medium and long-term plans that, because of the nature or character of land or the scale of ownership, will impact on that community's own development. That is a legitimate thing to do and something that many landowners already do. That is the most important thing. It is about engagement, not about consulting on the practical decisions that people intend to make about the future of their farming business, for example.

The Convener: We move on to questions on the right to buy land to further sustainable development, on which Angus MacDonald will lead.

Angus MacDonald: The witnesses' submissions show that they are broadly in agreement with the provisions on the right to buy land to further sustainable development. Dr Robbie stated that there is a need for a definition of "sustainable development". That issue came up with the bill team last week. However, the SRUC states in its submission:

> "Careful consideration will need to be given to whether sustainable development should be prioritised".

I would be interested to hear the witnesses' views on the necessity of introducing a community right-to-buy procedure in addition to those that are already in place. How should the various right-to-buy mechanisms co-ordinate with one another to ensure that they are straightforward to understand and implement?

Dr Robbie: Thank you for the question. I will take the last part first. It is difficult to co-ordinate the different procedures; if the provision is introduced, we will have several types of right to buy, each with its own separate tests and subtleties. It would be difficult to advise a community body on which would be the right or best one to go for, especially because we do not have any precedent of projects that have gone through under the new part 3A of the Land Reform (Scotland) Act 2003 or under the bill. That increases the lack of clarity.

There have been calls from many quarters—including my submission—to define sustainable development. However, some people say that there is no need to define it, and refer to the 2012 decision in Pairc Crofters Ltd and Pairc Renewables Ltd v the Scottish ministers: they say that not to have a definition is compliant with the European convention on human rights. However, in drafting a bill, our aim should be not just to achieve the bare minimum of legality but to agree clear, accessible and certain rules.

Some people also suggest that it is not desirable to define sustainable development because that will give people an opportunity to get round it, but the lack of clarity also means that there is greater scope for debate about what it means. Some people have significant resources to put behind arguing about what it means: the bill should not have a detrimental effect on people who have fewer resources, who could be particularly affected by section 60, under which there can be an appeal to the sheriff not only on a point of law, which increases the potential for significant debate.

I am not convinced that there is a sufficiently settled understanding of what sustainable development is. In 2011, Professor Andrea Ross

wrote a book on sustainable development law in the UK. She said:

"the UK's approach to sustainable development has varied over time and between jurisdictions and sectors so that no consistent understanding of sustainable development with clear priorities and a framework for decision making exists in the UK."

That leads to a lack of understanding on the part of community bodies and landowners. Certainty is an important principle, because people's livelihoods depend on land and because people do not necessarily put effort into developing their land over a long time if their ownership position is not predictable.

Because the term "sustainable development" is used in planning and other land reform statutes, now is the time to give more guidance on what "sustainable development" means. One of the worst outcomes that we could have is that the term is so vague that it becomes meaningless. There are various materials to assist with providing more detail on what it means. At UK and international levels, people such as Professor Andrea Ross have been doing comparative work on how the jurisdictions manage the term.

The term "sustainable development" is not a solution to problems, but it can offer a forum to allow concerns such as social justice, environmental protection and economic development to be balanced. There should be transparency about how those various policy spheres are balanced.

From a more substantive point of view, the current interpretation of sustainable development does not appear to allow the purchase of land to maintain the status quo, and it appears to prevent the purchase of land for conservation purposes. I do not think that the balance has been sufficiently addressed in favour of environmental factors. That is one issue that I want to be clarified in future discussions.

11:15

Steven Thomson: Jill Robbie's final point is one that the SRUC makes in our submission. When we are dealing with a subjective term such as "sustainable development", what it means to me might be different from what it means to each member of the panel and member of the audience here. We all have our own weightings depending on whether we have an environmental focus, a social focus or an economic focus. If the definition comes down to a ministerial decision, it will really depend on what the objectives are. We need clarity. Part of the problem is that the term is so subjective and will not mean to one community what it means to another.

I remember a couple of cases after the community right to buy had been enacted in which the community's application was refused because it did not meet the criteria for sustainable development. It did, perhaps, in its own eyes, but it did not in ministerial eyes. However, this goes beyond sustainable development, because the bill also talks about "public interest". What is that and who defines it? It talks about "significant benefit" and "significant harm". Those things, too, can be defined slightly subjectively. Who will determine whether there will be significant harm to a community if it does not get access to the land?

I return to Jill Robbie's point about the existing mechanisms, because it answers part of the question. We already have the community right to buy. I can foresee, if a community has registered that right but the landowner does not want to sell, a situation in which the community and the landowner will fall out and the legislation used as a means to an end—to try to enforce a sale. We have to be careful about how we deal with all the definitions.

Malcolm Combe: I take on board everything that Jill Robbie said about the need for a definition, but over the years I have become comfortable with the idea of sustainable development not being defined. We have operated under the 2003 act. As Jill Robbie mentioned, there have been issues with environmental buy-outs, so to speak, where people are not seeking development, but it could be argued that that is caught by the new part 3A of the 2003 act, which allows communities to buy land that is

"wholly or mainly abandoned or neglected"

and to buy land where there is an issue with the community's

"environmental wellbeing".

I suppose that there is an issue to do with what the part 5 right to buy is about. Is the aim to allow more community empowerment? If so, that is fine. Maybe one way of differentiating the right from what has gone before would be to move away from a sustainable development test. I did not address that in my written evidence so I am on a bit of a wing and a prayer here, but that is something to consider.

As I said, I am relatively comfortable with how sustainable development has functioned under the 2003 act and with what might arise from the bill. To my mind, part 5 is reminiscent of more community empowerment. That is fine if that is what the bill is about.

The Convener: Malcolm Combe and Lord Gill seem to be on the same side of that argument.

Malcolm Combe: I am happy with that. I am in good company.

Andy Wightman: To answer Angus MacDonald's question, I am comfortable with the new power. I have never been a fan of the "community right to buy" framing. I think that local authorities should have been involved right at the beginning. It is testing for communities to set themselves up using a corporate vehicle that was established for companies in the 19th century. That is relaxed somewhat in the Community Empowerment (Scotland) Act 2015 and the bill, but we potentially have a complex legal environment, not least because we would have a register of land for sustainable development, a register of community interests in land, a register of crofting communities, a register of abandoned or neglected land and so on. Incidentally, none of those registers is integrated with the land register, and someone who is searching the land register will get no hint that there are statutory restrictions. For example, the register of community interests in land is simply a register of scanned pdf documents—there is no digital mapping.

Now that we have three distinct community rights to buy—the bill will add a fourth—we need to think about how the administrative law around those rights is framed. I think that there should be much more co-ordination and that the law should be much easier for communities to understand. I have worked with communities that have tried to use the Land Reform (Scotland) Act 2003, and they have found it difficult to navigate even that act, never mind having to make a choice between another two rights to buy that they might have.

On whether sustainable development should be defined in the bill, I agree with Malcolm Combe that the matter has been adjudicated on in the courts and is a decision for the Scottish ministers. However, I do not agree that the Scottish ministers should be making those decisions; they should all have been referred to the local authority level way back in 2003—but we are where we are. It is important to emphasise that the reference to sustainable development is in the context of ministers making a decision to grant a right to buy and being satisfied that making such a decision is, under section 47(2)(a),

"likely to further the achievement of sustainable development".

We can all have different definitions of sustainable development, but given that ministers have to assess the likelihood that a decision will further the achievement of a nebulous concept, I do not think that there is any need to define sustainable development, because it is wrapped up in those three massive qualifications.

Sarah Boyack: My question is sparked off by Andy Wightman's last comment. One of the challenges is that people will have a choice of different land reform legislative options, and the question is how the process might be made more straightforward for members of the public and landowners in how the three acts will interplay with each other.

Andy Wightman: I walked down Princes Street in 2005 or 2006 and saw billboards on bus stops that said, "Do you know about the outdoor access code?" They were promoting part 1 of the Land Reform (Scotland) Act 2003 to the public. Part 2 was never promoted. No effort was made to go round community councils, local authorities, civil society, the Women's Royal Voluntary Service, Citizens Advice Scotland or whoever to ask, "Do you know about this new right?", although that effort should have been made. When communities are being invited to consider exercising any of their rights to buy land they should expect to be asked, in administrative terms, "Which of these options would you like? Would you like a right to register? Do you think that the land is abandoned and that you could buy it now? Does it meet your goals of sustainable development?" and so on. The process should be made much easier. Communities should not be left to navigate complex legal frameworks and to second-guess ministers' decisions in each of the three circumstances. That is almost an impossible situation for them to be put in.

The Convener: We need to move on. Angus MacDonald has some questions and Alex Fergusson wants to come in after that.

Angus MacDonald: We have heard Andy Wightman's view on sustainable development, but I would like clarification. For the record, can we have your comments on the definitions of "sustainable development", "public interest", "significant benefit" and "significant harm" that the Government should be using, and whether they should be in the bill? When consideration is given to how "significant benefit" or "significant harm" is to be interpreted, how will the provisions ensure that adequate consideration is given to the impact on the landowner?

Andy Wightman: My response to your last question is that that is part of the test that ministers will have to apply in making their decisions.

I am quite comfortable on the question of the definition of public interest. That is already a well-established area of law that goes back to the 19th century, with compulsory purchase legislation. That, in itself, was an attempt to provide one legal environment for what had previously been a series of separate private acts on acquiring land on which to build railways and so on.

I am not happy with the section on harm. I think that it should be removed from the bill, because it will render the power virtually meaningless.

Alex Fergusson: I contest what Andy Wightman says. The impact on the landowner is addressed in the four key points that communities have to meet. As we said to the civil servants last week, if we look at those tests and the landowner's right to make representations on the impact that they believe a right to buy would have on their business, the sustainable development of the community supersedes the case for sustainable development of the business. That is something that we need to address.

Andy Wightman: That is a fair point, but in law, the bill will provide communities with a new right to buy and there will be a decision maker who will have to balance whether the criteria in the bill are being met by the application with the evidence that the landowner supplies. That has, by and large, worked to date under the 2003 act. There is no evidence that it would not work under the proposed legislation.

However, the nature of the new right that will be granted by the bill might mean the introduction of new problems. I am thinking particularly of the complexity that ministers are faced with when making decisions. It is one thing to consent to the registration of an interest to buy at some undefined date in the future, and which does not make a great deal of difference now. It is quite another thing to consent to the involuntary transfer of land from a landowner to community bodies. The concerns that are being raised just now might be relevant here, but I am not sure that we can anticipate them in advance of the act being enacted and exercised.

Malcolm Combe: To go back to the law and the ECHR, I say that there is a lot more to this than the ECHR, but a landowner is obviously entitled to peaceful enjoyment of his or her possessions, so the significant harm and significant benefit test that is added is part of ensuring that that is not disrupted in a way that would be in breach of the system.

However, I will draw an analogy with Lord President Gill and the Pairc case. He said that the landowner did not necessarily have an expectation under ECHR for a ballot; that goes beyond what the ECHR necessarily requires for some kind of intervention. So as long as there is compensation and it is not arbitrary, and so on, the transfer could still comply with ECHR without needing the extra tests about significant harm and significant benefit. As I say, there is more to this than article 1 of protocol 1, but the significant harm and significant benefit tests might go beyond that, and that is fine.

Steven Thomson: The bill mentions

"significant benefit to the relevant community"

and

"significant harm to that community".

It does not mention the landowner. Throughout this bill's progress there must be balance; landowner and community interests must both be taken into account.

The same goes in respect of the tenant farming commissioner. It is not just about the tenants; it is also about the landowners. The whole bill has to be balanced, but the way in which it is worded suggests that it is in communities' favour.

The Convener: Thank you for your evidence on that. Common good land is the final topic for this panel. Christian Allard will lead.

Christian Allard (North East Scotland) (SNP): First, I thank Michael Russell for allowing me to come to Skye on this beautiful morning.

The committee has received three types of evidence on common good land. One type has come from Andy Wightman, for example, and it talks about

"a very modest and welcome reform"

but suggests that we might want to develop it.

11:30

Secondly, we have written evidence, such as that from the Royal Institution of Chartered Surveyors, which has taken a different tack on matters by saying:

> "the provisions relating to Common Good have to be considered further, with the view to exploring the possible abolition of Common Good property, and how this might be achieved, while leaving such property within the ownership of local authorities."

The third type of submission that we have received is from people who have made no comments whatsoever on common good land. I challenge the people who have come along this morning to tell us more about what prominence, if any, common good land should have in this bill.

Andy Wightman: Obviously this "very modest ... reform" is in the bill because it is an available legislative vehicle to overcome a defect that was, as a consequence of the City of Edinburgh Council (Portobello Park) Bill decision, identified in the Local Government (Scotland) Act 1973, whereby a local authority had the possibility of going to the court and seeking approval to dispose of common good land but had no avenue to seek to appropriate it and put it to another use. It seems bizarre that Parliament had intended that local authorities would be able to dispose of common good land, albeit with the approval of the courts, but would have absolutely no legal vehicle whatsoever to appropriate it. That seems to be wrong. In a sense, the bill is just remedying the 1973 act on that point.

On the wider point, other reforms were made through the Community Empowerment (Scotland) Act 2015 in relation to setting up a register. We will see how that works out. Almost every local authority in Scotland has a different definition of common good, and there is no statutory definition. Back in 2005, we produced our paper on common good land. I am very clear that the subject needs fundamental legal reform; it is an area of law that is still governed fundamentally by an act from the 15th century. I take extreme exception to professional bodies such as the RICS suggesting that the oldest form of community ownership in Scotland should simply be wound up. That is an incredibly arrogant view to take of a very important part of Scotland's heritage.

On submissions that gave no comment, I think that that is symptomatic of the fact that this area of law is so old, so complex and so fundamentally based on case law, with very few statutes. There is only one statute on common good land, and it is from the 15th century. The 1973 act merely makes provision for how to transfer land, and all the rest of it. The lack of comment in some submissions is symptomatic of the fact that people are confused about the subject and do not feel qualified to comment: it should not be read as people not being interested.

I have engaged with more than 100 communities around Scotland and have heard serious concerns about common good land from all sorts of points of view over the past decade. There is huge interest in the subject, but there is not sufficient grasp of the detail of it. People find it far too complicated and perhaps many people approached the bill from a rural perspective—I am not sure how many people who approached it came from Scotland's 196 former burghs.

Malcolm Combe: I fall into the camp of those who did not say much about common good land. That is not because I am not interested in it—indeed, I have written about the Portobello litigation. As Andy Wightman said, what is in the bill is a solution in terms of sorting out the appropriation versus disposal problem, which is fine as a legislative fix—I am perfectly happy with that.

To make a more general point, I agree with Andy Wightman that the regime can be quite opaque and difficult to understand. I will make an analogy that is probably appropriate for Skye, on crofting law. I know that Jim Hunter, who has been involved in various crofting bodies in the past, is on record as saying that we would not design a system like the crofting system if we were to start now. We would almost want to rip it up and start again, but in doing that there would be a severe danger that we would throw the baby out with the bath water. You have to be very careful. If you were to say, "Right, let's just abolish crofting", then goodness me, what kind of vacuum would we be left with? I agree, for all the reasons that Andy Wightman gave, that what exists is not necessarily easily navigable and so on, but just to do away with it would be interesting.

The Convener: We will finish this very useful session on that interesting point. I thank the panel for answering our questions. We will take a five-minute break—and I mean five minutes. We have a much larger panel to get on the stage, so please bear with us. Thank you for your attention.

11:35

Meeting suspended.

11:46

On resuming—

The Convener: We continue with item 1. Our second panel is larger than the first. It comprises Sarah-Jane Laing, director of policy and parliamentary affairs, Scottish Land & Estates; Peter Peacock, policy director, Community Land Scotland; Archie Rintoul, senior vice chair, Royal Institution of Chartered Surveyors; Andrew McCornick, vice-president, NFU Scotland; Pete Ritchie, executive director, Nourish Scotland; Andrew Prendergast, development officer, Plunkett Foundation Scotland; John King, business development director, Registers of Scotland; and Fiona Mandeville, chair, Scottish Crofting Federation. Welcome to you all.

There is no need for everyone to answer each question. Please indicate to me when you want to respond. I will call your name, so that it is clear for broadcasting purposes. We will kick off with a fairly similar question to one that was put to the first panel.

You have heard the previous panel's reactions on the land rights and responsibility statement. Does anyone have anything further to add on how the provisions may be improved? Should the Parliament endorse the statement? What other land use policies and strategies could it meaningfully link with? Will updating or reviewing it every five years be likely to lead to inconsistency or instability in the property market?

Andrew McCornick (NFU Scotland): There should be an emphasis on and proper regard given to agriculture. We are the main user of land. We need to have in the bill a proper definition of what we do on the land. We export £1.1 billion-worth of food, and £5.1 billion-worth of food and drink together. Food and drink is one of Scotland's key strategic policy areas. It is remiss not to have a direct reference to the main land user; our members are very upset about that.

Peter Peacock (Community Land Scotland): We support having the land rights and responsibility statement, although we are not entirely convinced that that is the right name for it. Andy Wightman made the point that if it is a statement of ministers' objectives for land reform, we should just call it that. If, however, it is a statement of land rights and responsibilities, it is well named. That is a comparatively small point.

The policy memorandum is very clear about the purpose of the bill: it is about furthering sustainable development, having greater fairness and equity, achieving equalities and human rights objectives and so on. We would quite like ministers, when they draft the statement for consultation and approval by the Parliament, to be required to have regard to those principles or outcomes: the progressive realisation of human rights, furthering sustainable development—which we will no doubt come back to—achieving equalities objectives, and achieving greater diversity of ownership. We think that that approach would provide solid guidance for the statement's broad framework.

The statement will be very important in informing the work of the Scottish land commission, among many other things. Consultation on it should be made explicit in the bill, and parliamentary approval of it would be desirable for a variety of reasons that have previously been discussed. Perhaps progress and what ministers believe the statement's success or otherwise has been in delivering against the objectives should be reported every couple of years to Parliament.

I will leave one other point on the table for the committee and, indeed, the Government to think about. We wondered whether there could be an additional set of provisions to allow ministers to establish national priorities in land reform for fixed periods of time so that they could say that, within those broad objectives, they would like to see a lot of progress on certain aspects of land reform over the coming three or four-year period. That would allow them to direct policy in that way. I leave that thought with you.

Sarah-Jane Laing (Scottish Land & Estates): I will pick up on what Peter Peacock said about outcomes. The statement should clearly set out what success in meeting land reform objectives looks like. That is critical for clarity and certainty for all interested parties. If the Scottish land commission is to have a role in reviewing progress against land reform objectives, we have to be clear about how that success will be measured.

I concur with the earlier comments about the helpfulness of debates in Parliament, especially in clarifying the meaning and intent of the statement.

On what else the land rights and responsibilities statement should refer to, I have heard lots of comments about the land use strategy. The national planning framework has been forgotten a little bit in respect of the linkages with land rights and responsibilities, and I would mention the national performance framework, too. My hope is that a land rights and responsibilities statement or, indeed, a national land policy would give a framework for a coherent approach to land policy in Scotland. The fact that there are a number of competing land uses has been mentioned, and which one takes priority at a certain time can depend on which ministerial objective people are trying to meet. A national land policy would give us certainty on what we are trying to achieve together.

Graeme Dey: For clarity, does the panel accept that the statement should also refer to the impact of land use so that we are clear that we need to take cognisance of things such as biodiversity and climate change in the land reform agenda?

Sarah-Jane Laing: That would be a very sensible approach. We have to look at not just the short term, but the long-term impacts of land use, especially in relation to biodiversity and climate change.

Pete Ritchie (Nourish Scotland): I concur with Sarah-Jane Laing and Andrew McCornick on the importance of food growing in the debate. We need to think of the land as our fundamental resource and we need a long-term policy for ensuring sustainable food production. Land policy should underpin things such as the national planning framework and the regional plans. In our area, the south-east Scotland strategic development planning authority plan is just going through. It would be very helpful to have a statement of the very broad, deep principles that underlie the planning legislation, as well.

We have said in evidence to SESplan, for example, that we would like things such as food belts to be designated around our major cities so that there is a coherent approach to the provision of food that can be grown near cities to strengthen the regional food economy. A proactive approach to land use planning and land management would be great.

To add to the long list of things that the land use policy should underpin, we must also remember the marine environment, which is obviously a big part of Scotland's territory, and soil. This is the international year of soils, and land use policy should stipulate the importance of soil, soil preservation and the maintenance of topsoil. Nourish would certainly like a concrete tax to be introduced at some point so that, if we start building on topsoil and sealing it, we make

provision for the 100 years of photosynthesis that there will not be on that bit of ground.

Fiona Mandeville (Scottish Crofting Federation): The SCF thinks that it is very important that there should be a land rights and responsibilities statement. That should and would be the benchmark to which land reform aspires. It would be a clear statement of land reform intentions and a clear indication to countries throughout the world that the Scottish Government is heeding the importance of this area.

We think that the statement should refer to increased public benefit from Scotland's land resource, more transparency of land ownership and use, and the specific desire to increase the diversity and number of people managing and occupying Scotland's land through small units such as crofts, woodland crofts, smallholdings and allotments.

Andrew Prendergast (Plunkett Foundation): I concur with what others have said about how the LRRS should go beyond simply being a statement of ministers' objectives. We noted that the Scottish Government has set out a starting point—a vision and seven guiding principles for land reform—under the heading "Land Rights in a 21st Century Scotland". We thought that that was a good starting point for shaping a comprehensive national land policy.

The Convener: We move on to questions about the Scottish land commission, which will be led by Dave Thompson.

Dave Thompson: We might be able to put this point to bed very quickly. The previous panel was fairly clear on the question whether the word "reform" needs to be included in the commission's title. Do the panellists generally accept the view that that is not necessary? Are there any views on that?

Sarah-Jane Laing: I totally agree that it is not required. The Scottish Law Commission is there to review and reform law, and it does not require the word "reform" in its title, so I see no reason why the Scottish land commission should include it.

Fiona Mandeville: I, personally, and my organisation think that the word "reform" should be in the commission's title. It indicates a willingness to improve and keep working on land reform, and would send out the right signals.

The Convener: I call Peter Peacock. [*Interruption*.] Can we have his microphone on?

Peter Peacock: I thought that I was being censored for a moment.

We are in the camp that would prefer to see the word "reform" in the commission's title. Perhaps there is not a lot in a name, but the policy memorandum makes it clear that this set of proposals is about reform. They come from the land reform review group report, in which it was made clear that reform involves

"measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest."

That means driving change that could be very controversial over time. It would be preferable if that was done up front. I take the point that some people have made that if the commission's title included "reform" in a way that artificially narrowed its work, that would be a consideration. However, as a signal of the intention to drive change in our society, we think that "reform" could be included in the title.

Archie Rintoul (Royal Institution of Chartered Surveyors): RICS does not believe that it is necessary to have the word "reform" in the commission's title. We think that what are important are the functions that the commission will have, and the bill should set out those functions and responsibilities. It is not necessary to have "reform" in the commission's title to identify its purpose.

Dave Thompson: The bill says that no public consultation is required on the commission's strategic plan—it just needs to go to the minister, and that is it. What are the panel's views on that? Does there need to be public consultation on the plan?

Andrew McCornick: Our organisation feels that it is absolutely essential that the strategic plan goes out to consultation, so that a broad view is gathered of what everybody involved has to do with it. We all have to get our input in and feed into the plan to ensure that it is delivered properly. The plan should eventually go through Parliament. There has to be provision for the plan to be taken through Parliament and to have the force of Parliament behind it. A consultation is essential to get a broad depth of views from every interested party.

Peter Peacock: We are in favour of provisions that require not just the strategic plan but the work programme to be consulted on. It is important that that is set out in the bill.

12:00

Andrew Prendergast: We think that there should definitely be a statutory responsibility to consult widely on the commission's work programme and strategic plan. It is slightly odd that Parliament must approve the selection of the six commissioners but is not required to debate what they do in their strategic plan. We think that that should be looked at.

Dave Thompson: Community Land Scotland commented on international land policy. Are the panellists of the view that reference to the International Covenant on Economic, Social and Cultural Rights would improve the bill?

Peter Peacock: We would strongly support the bill referring throughout to the covenant. An important reference to it could go into part 5—I will come to that later.

It is also important for the bill to make clear that included in the commission's responsibilities are having an awareness of, monitoring and keeping abreast of all the international obligations that are on us. The body should commission work to do that, and therefore incur expenditure. That is not clear at the moment, and it would be helpful if it could be made clear. Perhaps that could be picked up in the references that Mr Thompson suggested.

Pete Ritchie: Nourish agrees that the International Covenant on Economic, Social and Cultural Rights is an important part of the backdrop to the bill. We would like to see it incorporated in Scots law because it explicitly contains the right to food, and to appropriate and accessible food, which we regard as important. We think that the United Nations voluntary guidelines on tenure, which Andy Wightman mentioned, are also part of the backdrop to the bill. The more the bill is grounded in international law, the stronger and more robust it becomes and the better our debate about the fundamental principles underlying it will be. It is really important that we keep moving the debate on and putting it in a wider context, both historically and internationally.

Dave Thompson: Do the panellists have a view on whether the land rights and responsibilities statement and the commission's strategic plan should have a statutory link? Should the commission be required to integrate its work across the range of land use policies and strategies?

Andrew McCornick: There are a lot of land users out there and we need to involve everybody. We support a broad range of people owning land, working with it and occupying it. We need to pay a bit more attention to our tenant farmers and tenant crofters, who are part of our agricultural community, which is part of Scotland's communities. We certainly need to take them into account.

Peter Peacock: The land use strategy has a statutory basis—it is required to exist by statute—and therefore perhaps it cannot be formally part of the commission's work; I do not know, so that would have to be explored. However, in a number of representations, Community Land Scotland has said that land use policy has studiously avoided anything to do with land reform, as if land use can somehow be entirely separated from land reform. We think that that is a bizarre idea. If the commission is to do its work effectively and properly, it would need to be able to take account of all the other policies and ensure that they are properly integrated into any decisions that it makes.

Dave Thompson: I have one more question, which is on the range of expertise and experience that the commission should have. The bill has what I suppose is a restrictive list in relation to the experience and expertise of the five commissioners, plus the tenant farming commissioner. Is it necessary to list relevant factors in relation to experience and expertise? Is that too restrictive? Would the question of experience and expertise be better left open?

A huge variety of things need to be taken into account. I mentioned Gaelic earlier, for which I got some support. Would the panellists like to comment on that? Should the factors be kept open? Are they too restrictive?

Andrew McCornick: I said fairly clearly earlier on that agriculture has to have a definite presence. We are the primary land users, so we need to be there and to be seen to be there. As I explained, we deliver jobs beyond farming: our presence supplies a lot of employment and infrastructure down the food chain. Such information must be available to the commission. It needs to access the right people with the right answers in order to make this development become what it should be.

Sarah-Jane Laing: I would like the list to remain non-exhaustive, because in five or 10 years' time, the act will still be around and you may find that you need different expertise, depending on what is happening with land policy. I would like to be able to call on the right expertise at that time.

I echo all the calls for practitioner involvement—someone who has actively managed land. You would expect a member of the Scottish Law Commission to have practised law, so it would be good to have someone on the Scottish land commission who is a practitioner in land management, whether they have managed an estate or a community estate, or are a crofter or a farmer. That is an essential criterion for us.

Graeme Dey: Given the conflict that can arise between the uses of land for food production and for forestry to meet our tree-planting targets, if we were to have someone representing the agricultural sector, would we not, in the interests of balance, also require someone from the forestry sector?

The Convener: Perhaps witnesses can take the question on board in their answers to Dave Thompson's question.

Peter Peacock: Graeme Dey's question encapsulates the dilemma of how to make the commission a representative body. We are very clear that it should not seek to be a representative body, because, with only five commissioners, it would be impossible to represent all the interests that there are in land.

Before I came here this morning I was thinking about this question, which I thought might arise, and I quickly jotted down 18 different interests. How would we pick people to make sure that the body was representative? We do not think that that is the purpose of the commission.

This issue is crucial. If we do not get it right, the commission will achieve nothing. Let us be clear that, for our money, Community Land Scotland is not seeking sectoral representation and we are not seeking it for anyone else either. We want the commissioners to be people of stature, of independent mind and thought and of integrity, who understand public policy and the public policy objectives that the Government is trying to achieve, who can weigh up the public interest, and who are analytical, questioning and challenging, rather than people who seek to be representative.

We take that position, not just because we think that it is the right approach in order to get the proper dispassionate consideration of what will be very challenging issues over time, but also in recognition of the way in which the Government has sought to structure the commission, which we think is not far off being right. Entering into the spirit of the short list that is currently in the bill, we would like to see other expertise—in human rights, equalities and community development, for example—being represented on the commission to complement the other skills.

We must also remember that the commission and its staff can employ specialist expertise in the sectors, and they may regard that as an important thing to do. The commission should also be empowered to set up sub-committees that do not involve only commissioners. Therefore, it would be within the commission's powers to access all those 18 sectors that I listed, and many other bodies, to bring them into the discussions of the commission in an ordered way.

The commission will not be deprived of that expertise, but the commissioners themselves have a different obligation. They should be able to sit apart from all those specialist, competing interests and to sit apart from ministers in making their judgments and recommendations. If we do not get that, we fear that the commission will grind to a halt very quickly and will not be able to make the important recommendations that it is bound to want to make over time because it cannot reconcile the competing interests of the representatives.

Archie Rintoul: It is important that we do not see the list in the draft bill as exhaustive. It is a range of potential areas of expertise, but it should certainly not be seen as exhaustive. I agree with Peter Peacock that it is important that the commissioners consult widely with stakeholders in putting together their strategic plan. They should put together sub-committees using the expertise available more widely, to ensure that they make use of all that expertise and that it can feed into their strategic plan and other areas they are looking at.

Fiona Mandeville: We in the Scottish Crofting Federation think that it is important that somebody from a crofting background should be included on the commission. Crofting operates under a different set of regulations from the rest of Scotland and therefore it is important that somebody should be there to offer that perspective. It could be a practitioner, which would be ideal, or somebody with expertise in crofting law. Somebody with expertise in both land use and crofting law would be ideal, but that is probably a bit too much to hope for.

Going back to whether it should be called the land reform commission or the land commission, when I said that it should be the land reform commission I forgot to say that I think the concept of a land commission smacks a bit too much of colonialism and we want to get away from that. We want to adopt the importance of land reform that the Scottish Government is very commendably working towards.

Pete Ritchie: The idea of having a list of the people who should be on the commission is a hostage to fortune and should be deleted. Everybody is going to ask why a person representing their interests is not on the list. As Peter Peacock has said, the commissioners need to be people of stature. They will be responsible for the task, not for their constituency or profession. Their job will be to move the land rights and responsibilities statement into reality over a period of time—we are talking decades—and they should be allowed to stick to that and not be picked on the basis of whether they are a farmer, crofter, surveyor or anything else.

Andrew McCornick: In my previous contribution, I was trying to emphasise the expertise that we are looking for. I am not looking for a representative—it is expertise that I am particularly anxious to be available to the commission because of what we represent. It is the expertise of our representation that I am seeking to have involved.

The Convener: Sarah-Jane Laing will finish this section before we move on.

Sarah-Jane Laing: I stress the difference between sectoral interest and practitioner interest. Most land managers are now involved in integrated land management. The same land manager might be dealing with forestry, farming, tourism and community woodland all on the same pieces of land. We are not talking about sectoral interests but about someone who has practical experience in land management of whatever type.

Peter Peacock: I am sorry to interrupt the flow of the meeting, convener, but I think that there is something missing from the bill in relation to the commission. I will flag it here, but it may come up more when we look at part 5.

Ministers will have the power to refer any matter in relation to land to the commission. That is a good provision to have, as it means that the debate never stops and matters that were in the land reform review group report that are not addressed in the bill are not off the agenda. However, ministers will not necessarily have powers to act on all the recommendations that would come from a commission.

Let me give a hypothetical example. Ministers might ask the commission to look at a particularly large monopoly ownership in a particular area of Scotland and consider whether that is in the public interest. That could be referred to the commission and theoretically it would be a good thing that the power was there. However, if the commission came back and said that it did not think that the monopoly ownership was in the public interest, there is nothing that ministers could do about that. For reasons that I can argue later, Community Land Scotland thinks that ministers, as well as communities, ought to have a power to act to promote sustainable development at their own hand, not only through communities. There is a gap in the armoury that perhaps needs to be thought about.

The Convener: We will deal with that when we look at part 5 of the bill. Next we will look at part 3, which is on information about the control of land. Sarah Boyack will lead on that.

12:15

Sarah Boyack: I started with the statement in the policy memorandum that there is a clear public desire for greater transparency. My questions to the previous panel were designed to tease out how that might be delivered in the bill. I kicked off those questions by asking about there no longer being a requirement for owners of land to be EU-registered entities. What are your views on the omission from the bill of that criterion for ownership?

Peter Peacock: We think that part 3 is the weakest and most disappointing part of the bill, given where we were in the consultation process.

I listened to last week's evidence online, and I became convinced that this part of the bill was even weaker than I had thought. As Andy Wightman said earlier, even taking as a reference point the spirit of the bill as it is currently drafted, sections 35 and 36 are particularly weak. The committee is being asked to approve a bill that seeks to give regulatory powers to empower the keeper to ask certain questions, the answer to which might well be, "I'm not giving you that information," and that would be where the matter would stop. At the very least, we would want the provision enabling the keeper "to request information" to be changed to one enabling the keeper "to require information".

The more fundamental point is that the presumption seems to be wrong. The presumption seems to be that transparency can be limited unless a reason for openness can be demonstrated, whereas our view is that we should have entire openness unless a reason for secrecy can be demonstrated. I accept that, as Jill Robbie mentioned, there are circumstances in which someone's ownership should not be disclosed—for example, in the case of a woman who had been subjected to domestic abuse and in relation to whom there were court protection orders. In that case, it would clearly be wrong for the information in question to be in the public domain, but that could be readily argued. Therefore, I think that the presumption is wrong.

In listening to the evidence last week, it seemed to me that there are two reasons for the position that the Government has reached. First, it does not think that the original proposal would deliver the policy outcomes that it wants. However, I do not think that the fact that the proposal would not completely deliver those outcomes is a reason not to take the first step along that road.

Secondly, there was also an implication that owners have a particular right to secrecy and that it is necessary to have a very good reason to require openness. It seemed to me that that was founded in ECHR considerations, but the rest of us have human rights, too. Communities have rights to know. I wonder whether there might not be justifications in ECHR to balance the provision for secrecy in relation to owners, which seems to be driving the position that the Government has arrived at. It seems to be fearful that, if there were a presumption that openness was required, that would somehow breach ECHR.

I do not know whether that is the Government's reason, but I hope that the committee can probe the matter and push to the limit the testing of how acceptable it would be to go back to the original

proposal. There is not the slightest doubt that this is an extremely complex area of law, but I do not think that we are in the right place at the moment.

The Convener: I will now bring in John King from Registers of Scotland.

John King (Registers of Scotland): I think it was Jill Robbie who said that a great deal of good progress has been made on property and land law over the past few years, and one of the areas in which that has been the case is transparency. I know that it is not in the bill, but the announcement that ministers made last year when the keeper of the registers of Scotland was invited to complete the land register in 10 years is a big step towards transparency. Unless we have that top-level transparency on who owns land and the extent of the land that they own, it will be very difficult to drill down into different layers of transparency.

Section 36 provides for the ability of the keeper to ask for information. People will be asked to volunteer information, and we fully take the point that people will sometimes say no but, from the keeper's perspective, we are not starting out from the assumption that they will all say no. If the provision in section 36 is the one that goes forward, we see our role as being to inform and educate people, and to encourage them to provide that information.

There is a bit of double-edged sword, because the people who will provide the information will be solicitors—they will make the applications on behalf of their clients. The fact that we are dealing with a single group is a plus point; another plus point is the fact that we have a very positive working relationship with the Law Society of Scotland. Equally, we are acutely aware that solicitors have a duty to their client, and there will be occasions on which that duty will override their desire to provide the relevant information. However, we certainly see what is proposed as a step forward.

I disagree with the comment that Andy Wightman made about seeing no value in the provision: we do see a value in it. Previously we have asked for information on a purely voluntary basis, without having any statutory authority. In fairness, we often got that information, but what we also got were the why questions: why do you want that information? The benefit of having something in legislation is that it very strongly answers the why question. We can point back to the fact that it is the will of Parliament and that that is why we want the information.

I would like to say something about section 35 and the request authority, as it is a comment that has cropped up from a number of witnesses when they have been giving evidence. There seems to be an assumption that it would be the keeper who would have that role. As far as we know, ministers have made no announcement about which body would be the request authority. Certainly, the keeper's view is that it should not be her.

The keeper's view is that her role is to maintain the 17 public registers. It is an administrative role, not a judicial or quasi-judicial one. A request authority, however, has a quasi-judicial function. We do not consider that we have the resource, the skills, the expertise or the facilities to be the request authority.

The Convener: Thank you. Several people want to speak, so, if you can be brief, that would help. We will start with Fiona Mandeville.

Fiona Mandeville: I will be brief. I agree with everything that Peter Peacock said and I also wanted to say that under law crofters now have to be completely accountable, their ownership has to be certified, they have to live on or near the land and they have to work the land. Those requirements should be expanded to all owners of land in Scotland.

Sarah-Jane Laing: Scottish Land & Estates had no issues with the recommendation in the consultation about non-EU entities.

Going back to first principles on whether the provision should be included in the bill, we are still not clear about what part 3 is trying to achieve. If we are trying to decrease the use of offshore tax vehicles, that will suggest one solution. If we are trying to address individual and community concerns about who owns a field, who owns the drainage ditches which are not being cleared out or who has locked the gate, that will mean a completely different solution.

The solution to the second problem is delivered by section 35. If it is the first problem that we are trying to solve—the Government's desire to decrease the use of offshore tax vehicles—I would like to make a couple of comments. There are often claims made that the use of such a vehicle is linked to secrecy. Coming here, I drove through an estate that was listed last week in either *The Spectator* or another newspaper as having one of the largest offshore owners in Scotland. There is no secrecy about his ownership. The family has owned that estate for 30 years, there are big signs to the estate office, the owner himself has fronted planning applications and every newspaper in Scotland carried a recent article about the number of helipads that that owner wishes to use.

Therefore, the question is: what are we trying to achieve here? If we are trying to achieve access by communities and individuals to information about who is making land management decisions, I think that section 35 is quite a useful tool.

The Convener: I have to ask you about the alleged 750,000 acres that are in trusts.

Sarah-Jane Laing: I have no reason to doubt that that figure is accurate.

The Convener: So there might be quite a lot of land that you have driven through where the owners were not known, even locally.

Sarah-Jane Laing: Even for land that is not owned in trust, people do not always know who the owner is. There is a field near me in the Borders and none of us has a clue who bought it from the previous owner, although we have tried to find out. It is not just a question of trusts; it is about the accessibility of land information in Scotland.

The Convener: Indeed. Other people may come back on the question.

Andrew McCornick: Our members have no issue at all with transparency: it is good to have the information out there. However, we have real issues with what the information is going to be used for, which takes us back to what Jill Robbie said earlier. We do not want malevolence to be a factor in requests, and the issue is having a justifiable reason for requesting that information. What is a justifiable reason? Why is the person doing it? If we can get a definition so that people understand why requesters want that information, that would be fine—and we are happy to have transparency.

Archie Rintoul: RICS was certainly disappointed at how limited that part of the bill was in its wording, because we believe that land ownership and who ultimately controls land should be as transparent as possible and that property markets work most effectively and efficiently if who controls the land, as well as who owns it, is known. We would certainly like the bill to go much further than it does at the moment. We also wonder why, in section 36, the keeper has the power to request information, and why that is simply not made compulsory.

Graeme Dey: At the risk of going off at a slight tangent, I want to take the opportunity while Mr King is in front of us to ask whether Registers of Scotland has sufficient resources and is getting sufficient buy-in at the moment from landowners to lead him to believe that he can complete the register by 2024.

John King: The short answer is that we are very confident at this moment in time. There are effectively three strands for enabling completion. There are the provisions that the Scottish Parliament brought into play with the Land Registration etc (Scotland) Act 2012, which are essentially to do with market forces. Parliament increased the number of events that would trigger registration on the land register, and we anticipate that around an additional 10,000 properties, urban and rural, will come on over the first calendar year, and an equivalent number thereafter. That alone has a huge impact.

There is also the area that you are probably referring to. We are working to encourage people to register their land voluntarily. Our main focus, with Scottish Land & Estates, is the large estates, so we are effectively tackling the top 10 or 15 large landowners in Scotland. I have to say that we have had tremendous support from Scottish Land & Estates and from some of its members. We are starting a pilot with Buccleuch Estates, which we believe is the biggest private owner in Scotland. I say “believe” because that is one of the challenges around completion. There are titles on the old sasines register and, as we have heard from others, it is hard to be accurate about how much land is contained in one of those titles. We are working with Buccleuch, Hopetoun and various other estates that have expressed a desire to register voluntarily, so I am grateful for the work that they have carried out.

Pete Ritchie: I want to go back briefly to the substantive conversation that the committee had before with the previous panel, when it was suggested that it should be competent within Scots law to restrict ownership of land in Scotland title to entities that are registered in the EU. We have to keep asking why that is important. It is because transparency and openness mean that it is more likely that land is being used for its primary purpose of producing food, supporting biodiversity, underpinning economic development and generally not being used for tax avoidance and speculation. Nourish Scotland would certainly encourage the committee to have another look at that section of the bill and see whether it is possible to strengthen it significantly.

Sarah Boyack: Those answers have been useful. I want to tease out the issue about the power to request information as opposed to the power to require an answer and what the sanctions might be. The minute I started asking the previous panel what the sanctions might be, lots of people said, “Don’t go there,” so is it a case of having the right legal requirement in the bill to require answers so as to enable transparency and allow that information to be delivered? It has been suggested that the bill is too weak in that respect at the moment, and there are a number of suggestions as to how to remedy that, but without a change we are not going to deliver the transparency that is the objective of the bill. Would that be the view of the panel?

John King: I can answer that only by analogy. The way that land registration works means that there are a number of questions on the application form and, unless all the relevant ones are

answered, the application will not be accepted by the keeper, which means that an individual or company cannot acquire the right and the property. Not just in this case, but on any issue that involves the keeper making a determination about whether or not an application is acceptable, the sanction is generally to say, "Sorry, but you cannot get your application on to the land register."

Sarah Boyack: It is helpful to have that clarified.

The last question that I want to tease out has been suggested by a couple of the witnesses in writing and here today. It is about whether it is appropriate to ask the question—to request the information—and what the motives are for asking it. Dr Jill Robbie mentioned the possibility, for example, of somebody's signature being used online. Is there a commonsense way to proceed so that people's information is out there without every dot and comma of their personal details being able to be used in ways that are not appropriate?

12:30

John King: Scotland has the world's oldest public property register, the register of sasines, which is a great achievement. It was introduced in 1617 to prevent fraud, because the view was taken that there is less scope for fraud if there is more transparency, which is interesting in view of our debate today.

Access to documents and information has always been there in Scotland. Property deeds are publicly available. The argument for technology is that it makes them even more readily available.

Land registration is not predicated on a signature; it is predicated on who the person is who walks into the solicitor's office. Solicitors have an obligation to know their client. It is for solicitors to certify the information when they are submitting an application for registration. There is a whole layer of protection associated with a property transfer. There is a big role for the solicitor community in that.

I am not sure that having access to information makes the risk of fraud more prevalent.

Sarah Boyack: If somebody does not give the information to the land register, they are not deemed to have registered the land. A community might want to know who owns the land, but at that point there is no registered person or organisation owning the land. Does that make the land automatically open to the right to buy under the terms of the bill?

John King: If somebody had transacted to buy land and there was a defect with their application, they would not be able to get their application accepted. Either the land register or the register of sasines would still list the existing or previous proprietor as the owner.

Sarah-Jane Laing: Returning to Sarah Boyack's first question, I was trying to find the relevant section in the bill. My understanding is that sanctions can be imposed. The regulation-making powers allow for civil and criminal penalties for failure to comply with the regulations, for example failure to comply with a request for information without good reason. Therefore it would appear that sanctions already exist in the bill.

On the second point, about information being made public, one of the questions that we asked was how multiple requests would be dealt with. We do not want to have a very onerous system in which information is requested but is not put in the public domain, and the next-door neighbour comes to ask for the information, and then the next next-door neighbour. We need to look at how we put into the public domain the information that comes as a result of the request so that others can use it at the appropriate time.

The Convener: Thank you. We move on to part 4, which is on engaging communities in decisions relating to land.

Alex Fergusson: I do not need to do a lot of preamble, as I am sure that members of the panel heard our discussion with the previous panel and we do not need to rehearse a lot of those arguments again.

You will appreciate that concerns have been raised about the lack of detail about the guidance. Accepting that those concerns exist, does anyone have anything to add to what they have heard, particularly in relation to how the Government can ensure that the guidance is compliant with that which already exists on land management?

Is there anything to add on whether the guidance on engaging communities in decisions should be endorsed by Parliament—I believe that the general view is that it should be—to allow it to be further scrutinised?

There is also the issue—I know that there is variation among the panel members on this point—whether a carrot or stick approach should be engaged where either party is reluctant to enter the process that has been developed under the guidance.

If anyone has comments on any of those three issues, I would be grateful.

Sarah-Jane Laing: Scottish Land & Estates recognises the need for significant improvement in terms of engagement between landowners, businesses and communities. We are supportive

of anything that increases the opportunities for communities and landowners to work together. We are less concerned about the detail not being on the face of the bill, because we have experience of working with the national standards for community engagement. There is already guidance out there about proportionate approaches to community engagement.

Mr Russell—and possibly someone else—talked about engagement not being "just about telling"; engagement can mean informing people, for example, about when you are going to engage in certain land management practices.

Mr Fergusson is right to say that engagement is a two-way process—it is not just one person who engages. If you are going to consider sanctions, you must also consider situations in which communities do not want to engage. Lots of land managers across Scotland have had the experience of sitting in draughty village halls, waiting for someone to come and speak to them about their forestry strategy. What happens if no one comes to speak to you, although you have shown a willingness to engage?

We are trying to achieve attitudinal and behavioural change. It is about building trust, and the more prescriptive you are, the less likely you are to achieve the situation that we want, which is about dialogue and working together to achieve a shared vision.

Andrew McCornick: The guidance needs to be something that can be referred to and made use of. There should be something fairly robust in place, so that our members can know what the guidance is. To get a proper set of guidance, you should be engaging with the communities and all stakeholders involved with the land. It will come down to a case of failure to comply with guidance, and if we do not know what that means the guidance will not have done its job properly. There needs to be something there to allow people to know what "failure to comply" means.

Peter Peacock: We are pretty lukewarm about the proposal, although it is difficult to be against it. However, it is not about land reform; it is about land management and we are interested in change. That is a fundamental point.

Alex Fergusson opened up some interesting and pertinent points on the difficulty around the lack of clarity on the proposal. Given that it is here and will remain so, we have to try to make it work. It seems to be quite weak, in the sense that someone could engage and ignore with great ease, which raises those questions about sanctions and compliance that Alex Fergusson mentioned.

The other point that I want to be clear about is that if such a requirement for engagement were in place, it must not relate to day-to-day operational decisions. That would be hopeless for the community and the owner. It must be about strategic long-term, land use planning—rather like a local plan, but at an estate level. Like Sarah-Jane Laing, given the way in which the Scottish Government officials were beginning to flesh out to the committee last week what they envisaged by way of a consultation process and stakeholder engagement in developing the guidance, I would be quite relaxed about meeting some of the requirements that Alex Fergusson highlighted, because that would be in the interests of all those round the table. I would not be unhappy about that.

On the part about compliance, I suppose that technically, in the policy memorandum, the Government argues that if an owner did not seriously engage according to the guidance, whatever that ultimately says—we would like to go further than engagement, because the purpose should be to engage and seek to get a consensus on the long-term land use plan to give it more power—that would be one factor that ministers could take into account when an application to buy is made under part 5. If an owner showed no interest in engaging with the community, that would be one factor that ministers may take account of. However, the converse is also true—and this is the danger—in that owners could simply undertake engagement to tick the box of having done it, so that they could defend against any future application to purchase land. It would work both ways.

Some things need to be teased out, but if you can get to the bottom of the kind of questions that Alex Fergusson raised—some of the answers have already come out in this panel—it would be good to get that further development of the thinking.

Archie Rintoul: RICS welcomes the provisions for guidance on community consultation, and we are very happy with that. I agree with much of what Peter Peacock said about sanctions. It has to be absolutely clear what the sanctions will be and how they will be used. The policy memorandum suggests a number of areas in which sanctions might be used and outlines how they might be used, but greater clarity is needed in that regard. The landowners involved need to be absolutely clear about what they must do and what will happen if they do not do it.

Pete Ritchie: In general, Nourish Scotland welcomes the proposals. If we are going to talk seriously about land being managed in the public interest and for the common good, we need to understand this process of engagement as part of a dialogue in which we try to figure out what that involves. We have to have such conversations. I

agree that the proposals may or may not lead to people buying bits of land, but they may well lead to land being managed more in the public interest and for the common good.

As Archie Rintoul said, clarity is needed on what goes along with that engagement. We have had experience locally of dealing with a forestry company. The forest is owned by someone else and managed by the forestry company, with a 30-year replanting cycle. In order to get its gold star, the company supposedly has to engage with the community. It sends us its plan, and people get together and say, "Here are 19 things we'd like to be able to do", such as having paths through the forest when the replanting takes place. However, there is dead silence in response, so there is a sense of, "What was that about, then?"

Over time, those standards need to be linked in some way to something else. That might involve saying, "If you want to get this gold star"—or permission or a grant to do something—"you have to show that you have done this other thing." That is not a bad thing, even if people do it just because it is a way of getting to do other things that they want to do. The whole business of engaging with communities to discuss what is in the public interest and what is for the common good represents progress.

The Convener: Does Alex Fergusson want to follow up on any of those points?

Alex Fergusson: I want to follow up on one aspect that has come out of the discussion, which all the contributors raised but which I did not bring up previously.

Peter Peacock, in talking about a tick-box exercise, is referring to someone who goes through the process, ticks the boxes and then totally ignores the product of the discussion and does what he or she wanted to do in the first place. I can see the temptation in that regard.

Do you see a role for the land commission in that part of the procedure? Does anybody?

Peter Peacock: I have not really thought about that—I would need to think about it a bit further.

In our written evidence we made the point that the land commission, among its functions, should have the power not only to assist with the creation of, but if necessary to create itself, codes of practice and good guidance on land questions. To that extent, the commission may have a role in this area.

However, given the process that the Government proposes to go through in creating guidance that would place a requirement on the commission, the commission might not need to be involved at that level of detail. I would have to think further about that—the only current connection that I can see between the commission and this area relates to codes of practice and guidance, which could be developed further.

Fiona Mandeville: I do not have an answer to the question of how sanctions might be made or how everything that we have just been discussing can be implemented. I will just point out the results of community engagement in the form of the very beneficial developments that have ensued in many of the crofting community trusts. That highlights the importance of achieving engagement with communities.

Andrew Prendergast: I echo that point. We have been talking as though there is a combative situation between land managers and communities, but very often land managers and landowners have an awful lot to gain from positive engagement. In terms of the reputational aspect and the community's attitude to them, they may not actually have to do very much to get an awful lot of positive points from engaging with the community.

Alex Fergusson: I accept that absolutely, but in any such process there will inevitably be the odd occasion when there will be a combative element. Where that occurs, some sort of arbitration or mediation process will be needed. The land commission may not be the right vehicle, so we will need to think about that as the bill progresses.

The Convener: That is all very useful. We move on to part 5, which is on the right to buy land to further sustainable development. Angus MacDonald will lead on this area.

12:45

Angus MacDonald: Following on from the discussion with the first panel, I would be keen to hear the panel's views on whether it is necessary to introduce a community right-to-buy procedure in addition to those that are already in place. If that is necessary, how should all the various right-to-buy mechanisms co-ordinate with each other to ensure that they are straightforward to understand and implement?

Andrew Prendergast: We certainly welcome the new right to buy. I feel that it fills a gap between what has hitherto been in the existing community right-to-buy legislation, now extended through the Community Empowerment (Scotland) Act 2015, and the pre-existing compulsory purchase powers that were open to certain public bodies but in fact were very rarely used. However, we note that the extent to which communities will be able to unlock the benefits of the provisions will depend on their capacity to implement them in what remains a very complex area that is now divided between different pieces of legislation. Earlier, other commentators referred to the fact

that that will depend on communities' social capital and their capability, which needs to be supported so that communities that are less able to access the provisions in this bill and other legislation are enabled to do so.

Peter Peacock: I was saying to Mr Fergusson during the comfort break that I keep getting a feeling of déjà vu about this, because this is exactly the position that we argued in relation to the Community Empowerment (Scotland) Bill—it was where we wanted the committee to get to. It has been quite evident that the result of the interaction between the committee and the Government has helped the Government clarify its proposals to allow this new right to buy to come forward. We are very happy to see it. It is a further step forward and sets out a further set of considerations that a community can take into account in deciding how it wants to move forward. It is also based on a more positive, forward-looking notion about the opportunity of land and the opportunity for further sustainable development; it is not just based on combating neglect, dereliction or harm in that sense. We welcome it generally.

However, we think that there are a few things that you could do to tighten it up. Some of the hurdles that communities have to get over are really quite high. The question of harm was referred to in the previous session. The provision on that could be modified or indeed removed, as Andy Wightman said, although I think that it is probably there for a very particular legal reason. Demonstrating that the community's proposal is the only way to do something is almost impossible. Again, there are things that you could do to tweak or adjust that provision.

You asked specifically how we should co-ordinate all the different approaches. There was a lot of discussion about that among the previous panel. Our organisation is working with communities and aspirant communities for purchase all the time. You may be aware that the Scottish Government has a short-life working group looking at how the support mechanisms will be put in place to allow the 1 million acre target for community ownership to be realised. Sarah-Jane Laing and I both sit on that working group. It has not concluded its work, and I cannot tell you what it will recommend, because that has not been agreed yet, but I can tell you that there has been a lot of discussion in the group about how awareness can be promoted about all the different pieces of legislation that now exist. There is huge ignorance about that, even among professionals in the land sector, let alone among communities. We do not think that that is impossible to deal with. We now have a very clear suite of measures in place. They are very complex at one level, but we are quite confident that it could all be simplified.

The short-life working group will make recommendations to the Government. I am pretty confident that it will say things about the need to promote more awareness but also to put in place the support arrangements that will allow communities to exercise a much higher degree of understanding in lay terms of what the law now provides and to choose the legal avenue that best suits their circumstances, if indeed that is the route that they want to go down.

I am quite sure that in time you will see a huge amount more emphasis on promotion, awareness and providing support to communities to allow them to exercise the new rights that now exist. As people have said, the landscape is complex. However, communities have learnt to live with that complex landscape and to make it work. There are people who completely understand it—I am not one of them—and who can help communities navigate through all the complexity of the law. There is a task to be done in better presenting that in lay terms, but I would argue that that is under way.

The Convener: Thank goodness it is not like the Schleswig-Holstein question—there are people who understand it.

Sarah-Jane Laing: I agree in part with what Peter Peacock has just said; there is a need to inform people and to raise awareness of the routes for addressing barriers to sustainable development. We are, of course, aware that those barriers are not just linked to ownership.

There are lots of things going on to involve people in planning. Although we might get a little bit hung up on the provisions of the Community Empowerment (Scotland) Act 2015 on neglected and abandoned land, there are also provisions about locality planning, which I think will be instrumental in helping communities to work with landowners and businesses to address barriers to sustainable development in their area.

Peter Peacock has referred to a few of the discussions that took place during the passage of the Community Empowerment (Scotland) Bill. At that time, the minister said that landowners needed certainty as to the scope of the land that would be affected by the bill's provisions: I do not think that there is certainty. A land manager who looks out of their window today should be able to tell which areas of land are neglected or abandoned, and will be privy to the provisions in the 2015 act. A manager who is looking out of their window might be very happy with the way in which their land is managed, and might be quite happy with, for example, the yield that their barley field will give them. The reality, however, is that that property or field could be subject to the act's provisions. The powers also apply to land that is occupied and that is properly and well managed,

which clearly seems to be at odds with the Scottish Government's assertion that good landlords have nothing to fear from the Land Reform (Scotland) Bill.

However, there are situations where barriers to sustainable development need to be addressed across Scotland, and I am not sure that the proposed provisions are the ones to do it.

Pete Ritchie: I echo some of Sarah-Jane Laing's points about the complexity of the matter. This is born of the experience of being part of a community group and using the right to buy to try and get hold of a derelict steading that is, in our view, neglected, abandoned and an eyesore, but ending up losing in the courts over the right to buy and having to go back to square 1. We are now looking at the provisions in the bill and are wondering whether they will add another choice. It is certainly a good idea that there should be a power to purchase land compulsorily when it is clearly not being used in the best interests of sustainable development.

Nourish Scotland certainly feels that it is time that local authorities had a stronger role in land management and land acquisition in their localities. We feel that they have a better understanding of local needs and circumstances. It seems to be a bit disproportionate to have to go to Scottish ministers to argue for a derelict steading to be used for affordable rural housing, in order that we can sort things out locally. Nourish would generally like local authorities to take a much stronger role in land ownership, land management and land acquisition. This is not a specific comment on the section concerned, but we are saying that that should be part of the direction of travel of land reform.

Andrew McCornick: Oddly enough, NFUS members have quite a lot of worries about some of the provisions on communities' right to buy. First, we have issues with the definition of "community", because it is possibly a matter of postcode. It could be a matter of how long the person has been in the community. Is residency required for the people who are taking part in decisions? Who ultimately makes the decision and gives the answer? All of those things come into it.

There are four key tests, which seem to be skewed towards the community. We would like balance for landowners or land occupiers. We keep having to refer to "land occupier". A tenant farmer should be equally involved in the decisions. We would like them to be involved and to play a big part in the decisions.

Is there a possibility that the provisions could allow for a lease rather than a sale? Would not that be better for engagement with the community, whoever that is? We can see that that works in respect of wind turbines; there are benefits to be achieved through farmers leasing land for community benefit. That needs to be taken into account.

We also have a big worry about third-party involvement with some communities. I assume that people could be brought in to fund a community plan or a community development. We would have to be very careful about who those third parties are. If they are there to make a development gain, is that really to the benefit of the community? They could be using a community for their own benefit. That is a real worry for a lot of our members.

The Convener: Okay—I think we get that point.

Fiona Mandeville: One of the most basic definitions or interpretations of "sustainable development" is the restoration of communities to land that they once lived on and were cleared from; I am thinking of the straths of Sutherland, for example. It would be a good aim of the bill to provide a way to help communities to come back and to have people living in those glens again. That would strengthen communities; it would open up more schools and local infrastructure. The Scottish Crofting Federation argues that any new holdings in those glens should be under crofting tenure. Crofting is held to be the role model for small-scale communities and developments throughout Scotland and well beyond.

Archie Rintoul: The RICS agrees that there is a gap that could be filled by the provision. However, the organisation for which I work in my day job carries out evaluations for the Scottish Government under the Land Reform (Scotland) Act 2003, and we have been struck by the difficulty that communities have in finding their way through the legislation in order to acquire land. I appreciate what Peter Peacock said about there being organisations such as his—Community Land Scotland—that can give guidance. However, it is still a significant hurdle for a lot of communities. They perhaps do not even get as far as Peter's organisation if they are thinking about acquiring land. They have a look at the matter and think that it is very difficult.

I suspect that the provisions in the bill mirror those in the 2003 act and changes that were made through the Community Empowerment (Scotland) Act 2015, which is fine in that at least the provisions are pretty well the same. However, they will still be difficult for a lot of communities to find their way through. The Scottish Government will have to ensure that it monitors the situation very closely. It may well be the difficulty of the process that is responsible for the fact that relatively few transfers have taken place since the 2003 act.

Angus MacDonald: I have just one small question. Peter Peacock touched on the matter earlier, but for the record I ask the panel whether consideration should be given to providing for a direct power of ministerial intervention to buy land to further sustainable development if there is no community present.

Peter Peacock: That is one of the gaps that we think there is in the armoury that is being provided by the bill; it partly relates to the point that Fiona Mandeville made about cleared land.

It will be possible to use the powers in the bill only if a community initiates the action itself. We know from experience that not every community wants to do that, although it may have concerns about the place and the land use there. Some communities simply do not have the capacity or the strength to initiate action.

Also, there are not communities everywhere. People have commented about how, on their drive here today or yesterday, they drove through vast tracts of land that once supported thousands of people. The people are not there now and therefore there is no community to exercise the new community right to buy. We think that ministers should have that power, independently of communities. At one level, the proposal to give the power to communities is very complimentary to them, but it is not the whole answer: we think that ministers should also have powers. Fiona Mandeville made the point that there ought to be the opportunity for land that was once cleared to be resettled. Also, it will not always be possible for a community to achieve settlement of land over time. The Government should also be thinking about ministers having direct powers to further sustainable development, as part of the armoury.

I am also keen to answer some of the points that were made about sustainable development by the earlier panel, but I will leave at that just now.

The Convener: You can do that in a moment. We are trying to get as much out of this meeting as possible and the committee has the stamina. I hope that the audience has the stamina, as well. It is a complex matter and it is important to have as wide an exercise as possible so that we can collect the points of view to review in due course.

We will hear from Andrew Prendergast first.

Andrew Prendergast: I want to come in on a couple of points, one of which touches on the issue of what represents sustainable development. There was discussion earlier about needing to get clarity on what is sustainable.

13:00

Communities and assets acquiring land is quite a hard route to go down; it is not something that is done lightly or flippantly. The communities that do it do so because they recognise that there is a strong development need. A community is unlikely to look at someone's barley field and say, "Actually we could do better with that", because most communities are very happy if the land is being used productively and usefully. It is only when the land is clearly not being used productively that a community would go down the difficult route of trying to acquire and run a business itself.

The Plunkett Foundation thinks that it would be useful if ministers were to have regard to the International Covenant on Economic, Cultural and Social Rights when considering an application, in the same way that they do when considering community right-to-buy applications under the current land reform and community empowerment legislation.

The Convener: I ask Peter Peacock please to put on record briefly his points about sustainable development.

Peter Peacock: I have been listening to the arguments about sustainable development for many years, and in particular over the last two weeks in relation to the bill, and I do not buy the idea that "sustainable development" is vague and undefined. If you look into the concept of sustainable development and Google it you will spend the rest of the month reading up on what is a developed concept—it is not vague at all. I am sure that that is what allowed Lord Gill, when he was challenged in court that the concept is so vague as not to constitute law, to disagree and say that it is a term that is in common parlance that is readily understood by lawmakers and the courts. There is real strength in what he said on that.

We must be careful to distinguish between what is on the face of the bill and what exists in the form of established Government policy. Many pieces of Scottish legislation include the term "sustainable development", yet it is nowhere defined. In all the land reform legislation that we have touched on today, a community body, to reform itself, must demonstrate that it is furthering sustainable development—but it is not defined.

In parts 2, 3 and 3A of the Land Reform (Scotland) Act 2003, the term sustainable development is repeatedly used—ministers have to have regard to it in weighing up their decisions—but it is nowhere defined. As recently as June 2015, Parliament has passed an act that went through to committee and in which sustainable development again appears on the statute book without a definition.

I do not see why this bill in particular needs to include a definition of sustainable development. As Malcolm Combe does, I think that the bill as it stands is perfectly valid in that regard and that it is

helpful that sustainable development is not defined.

Going beyond the bill, there are loads of established Government policies and documents at UK and Scotland levels that set out thinking on sustainable development. Parliamentary questions have been answered by ministers setting out the various positions, and sustainable development is referred to in statutory planning guidance, the national marine plan and so on. Many of those documents hark back to "One Future—Different Paths: The UK's shared framework for sustainable development", which sets the matter out in more detail and was signed up to by the UK Government and the devolved Administrations in 2005.

The key is not to worry about what is on the face of the bill in terms of sustainable development, but to point people to what sits beyond the bill, where the subject has all been carefully rehearsed and developed. The court has said that it does not see a particular problem. The courts are ultimately there to determine the outcome and to adjudicate on challenges to the legislation; if they do not have a problem with the term "sustainable development", I am not sure that Community Land Scotland should.

The Convener: I am trying to make sure that everyone gets a say, but I am also conscious of the time and I would like to bring this part of the meeting to a close.

Andrew McCornick: I think that Peter Peacock contradicted himself there.

Peter Peacock: Not for the first time.

Andrew McCornick: Probably not, but it does not matter.

Peter Peacock said that you could spend a month reading about sustainable development: that is the problem that our members face. The problem is vagueness. There is nothing that defines the term precisely; there are interpretations of the term, but the fact that there is a month's reading if we Google it means that everyone will interpret sustainable development however they want. How can we move forward? We need a definition so that we can say, "Okay—this is sustainable development. We can work with that." We need all parties—communities, landowners and land occupiers—to understand it. The issue for the NFUS is that the matter is entirely open to interpretation at the moment. If we can pin that down so that we know what we are dealing with, we will get there.

The Convener: We hear that point of view.

Pete Ritchie: At the risk of repeating myself, I am concerned that we keep hopping over local government as the mechanism for compulsory purchase and for proactively doing the sorts of things that Fiona Mandeville talked about. If we want to repopulate the straths, it is for the local authority to think about that as part of the community planning process, which has just been reviewed and renewed as part of the democratic renewal we are promised for the next Parliament. Local authorities should look at their local economic development plan and their local spatial plan and ask how they will repopulate the glens. If that means that the local authority has to buy some land and make some new crofts, let us do that.

It seems strange to hop over the statutory bodies that actually have the planning and economic planning responsibilities and community participation responsibilities, and instead to go straight to Scottish ministers. We need to redress the balance in terms of role of local authorities there.

Archie Rintoul: One of the difficulties with looking at Lord Gill's statement in the Pairc case was that it was made in a specific legal context for that case. It would not necessarily translate into other legal contexts such as this bill, so that is a word of warning.

There are various definitions of sustainable development—the policy memorandum contains one by Lord Sewel in the context of the Sewel commission, there is one in the Local Government (Scotland) Act 2003, and there is one in the Brundtland report, which is widely used. The concept is not undefined, but one of the difficulties is that the definitions differ in one way or another. It needs to be absolutely clear which definition of sustainable development the Scottish Government is using in the context of the bill. If that will not be clear in the eventual act, it needs to be very clear in guidance notes that are separate from the act.

We had similar difficulty and debate in the Community Empowerment (Scotland) Bill over what is land that is

"wholly or mainly abandoned or neglected."

In the end, with that act, there was pretty clear guidance on what ministers would take into account and what they would consider in making their decision on whether land is

"wholly or mainly abandoned or neglected."

That would have to be the case in the context of the bill. Detailed policy guidance on how ministers will interpret the phrase and what they will take into account will be needed.

The danger if there is no such guidance is that the first time ministers decide that a transfer should take place to further sustainable development, and there is an aggrieved landowner, that landowner will go to the sheriff, as

he is entitled to do. The sheriff will then decide on his interpretation of "sustainable development", "significant harm" and "significant benefit". The courts sometimes make surprising decisions on such things, so it is probably better if Parliament makes it clear what it intends the interpretation to be.

Sarah Boyack: I have a quick follow-up to Pete Ritchie's comment about local authorities being able to act on behalf of communities. The committee should log that without necessarily going into it now. We might want to come back to the question whether we see local authorities as potential vehicles for third-party purchase on behalf of communities.

The Convener: Thank you very much. We will move on to common good land, on which Christian Allard has a question.

Christian Allard: First I would like Archie Rintoul to explain the submission that he has made. When he has done that, perhaps the other panel members could give us their ideas about common good land and how it is defined in the bill. We know that what is in the bill is to resolve a particular problem, but perhaps what is in the bill has weakened what common good land is all about, and maybe there is a missed opportunity for what common good land could be. Maybe it could be central to land reform, particularly when we talk about local authorities, as Pete Ritchie did. We may end up taking the view that common good land should be extended, which would mean a lot more disposal of common good land, and perhaps local authorities would no longer want to acquire more common good land, so we could update that status.

There may be no identified owner of land; the question is whether such land should automatically become common good land. There is a lot to talk about in relation to common good land, but first I would like Archie Rintoul to let us know why he thinks that it should be abolished.

Archie Rintoul: By and large, local authority assets are managed by chartered surveyors. A number of chartered surveyors who are involved in asset management have expressed a view to RICS that there really is no need to have a separate class of local authority assets under common good. It is over 40 years since common good land could be created. Whether it is common good land or land that is held under some more normal term of land ownership for local authorities, it is essentially all held by the local authority for the benefit of the community that that local authority represents. It is the view of many chartered surveyors who are involved in asset management that there is no longer a need to distinguish between common good land and land that is not common good land.

Sarah-Jane Laing: I would like to take my Scottish Land & Estates hat off for a moment to make a comment on common good land as a private citizen, and to disagree completely with Archie Rintoul on that point. I come from the Borders; those of you who know the area will know that there is a significant acreage and a significant amount of property in common good ownership, so I want to stress the importance of common good land to communities not only in the Borders but elsewhere.

I would be very concerned about provisions that would weaken scrutiny of the misuse of common good land by local authorities. I say that as a former local authority employee who was involved in selling off common good land, which was common practice at the time. Time and again, I have seen local authorities mishandle and misuse common good land in our communities, so I think that there is a need to preserve it.

Peter Peacock: I will take this comparatively rare public opportunity to agree with Sarah-Jane Laing. I can do so because she said that she was commenting as a private citizen, but she is absolutely right. It is terrible to think that we might do away with hundreds of years of history at the stroke of a pen, simply because it is not administratively convenient any more—if I have accurately interpreted what Mr Rintoul said—because not only does common good land represent good history, but it represents an asset for the community.

In the spirit in which Mr Allard spoke, it seems to me that, rather than do away with common good land, we should ask how we can modernise it and make it relevant for today, and how we can get more of it rather than less. That is the challenge, but the bill does not deal with that. Maybe one of the tasks for the land commission is to get on with thinking about how to do that and how to enliven the system, make it modern and make it more democratic at very local level, so that communities can use their assets more effectively.

The Convener: We have heard different points of view on that, which the committee will review in due course. What we have heard may answer Christian Allard's questions. I thank the panel, who have been well disciplined and have had lots of chances to put their points to us, which we welcome.

13:14

Meeting suspended.

13:25

On resuming—

The Convener: I very much welcome our third and final panel of witnesses today, which comprises Rachel Bromby, managing agent for the Cawdor Estate, and John Glen, the chief executive of Buccleuch Estates.

We will kick off with issues that relate to the land rights and responsibilities statement. Both of you set out extensive areas where you contribute to the common good and so on. To some extent, could the statement be emotive or ideological? How could the current proposals be improved? Should there not be such a statement?

Rachel Bromby (Cawdor Estate): We welcome having a land rights and responsibilities policy statement. However, it must contain specific and achievable targets. There are already a lot of codes of conduct and initiatives in place that are helping to achieve such responsibilities. One concern that we have is that specific legislation could become too prescriptive and could prevent dynamism in land ownership and land management.

A lot of good is already being done by landowners and those who control land, including tenant farmers. We engage extensively with local communities. We engage with people and we welcome people on to the estate, to encourage openness. We work with the Royal Highland Education Trust to bring children on to the estate and explain more about where their food comes from and what goes on.

We are keen to generate public benefit from private land, and we feel that it must be for the benefit of all. We are a well-established entity, but we welcome greater partnership and collaboration with communities. We would like to see that, but what is happening already must be taken on board.

John Glen (Buccleuch Estates): Like much of what is in the bill, the land rights and responsibilities statement has the potential to do something quite positive. However, if the provisions were drafted in the wrong way, they could be quite negative. If the measure encouraged us to have a conversation about what we are trying to deliver and what the roles and responsibilities are for both sides, that would be a useful conversation to have.

The difficulty is that we have to start with a diagnostic of what is wrong today. That is an uncomfortable discussion, which a lot of people seem to want to run away from. There is practically no land use in Scotland that is not influenced by policy and subsidy. To speak culturally and behaviourally—I am generalising; there are always exceptions—we have developed a culture in much of rural Scotland that is basically like Pavlov's dog: whenever the next subsidy or handout comes out, we all run off and chase it. We have squeezed out a sense of entrepreneurship about what we can achieve. That is not part of the conversation that we seem to be having.

In my experience, there have been some really meaningful conversations—we will perhaps come on to this when we get on to consultation—about the relationship between rural and urban. Increasingly, the rural is viewed as an offset for environmental misbehaviour in the urban, whether through renewable energy, carbon sequestration or whatever. Are the mechanisms that affect the relationship between urban and rural what they should be?

Are our policies on how we hand out the sweeties aligned or contradictory? How does the approach fit in with planning and with housing, which also do not seem to be terribly well aligned? If making the land rights and responsibilities statement encourages us to have the conversation and to have the courage to talk about a diagnostic, I will be all for it.

13:30

The Convener: The conversation could be debated or endorsed by Parliament, so it could go all the way through the country. Would you agree with that line of travel?

John Glen: Yes—absolutely.

Rachel Bromby: One thing that is not made clear in part 1 of the bill is the impact that the changes under the bill might have, particularly on food production, the sustainability of existing farm and estate businesses and potentially tourism, which has not been discussed in great detail today. Another issue is the strategy for investment in rural communities, which make Scotland such a diverse and interesting place to be.

The Convener: We have talked about the bill's provisions linking up with other policies. John Glen has made it clear that he thinks that planning and many other things need to be linked with it, as has Rachel Bromby.

How should landowners who do not contribute to the common good as extensively as the panel would wish be encouraged to engage positively? There are points of view, and John Glen mentioned both sides. The side of the good is to have the conversation. This is not about two sides to a story but about good relations and bad relations. How do we encourage people if we do not have a land reform statement that we can measure people's behaviour against?

John Glen: We want to give encouragement, but we have to look at the practicalities and do a bit of segmentation. One segment is a conversation about the current land uses, how they affect people's lives and whether they work. There is a separate process when people are seeking to change something, which usually involves set consultation processes and all the rest of it.

Land use is a vastly complex subject. Very little land in Scotland has only one use; there is a layering of uses. My experience is that we have not been very good at getting our own thoughts and the methodologies that we used to say, "Why did we make that choice?" before we have changed anything. Why did we choose to do that over there and this over here? What impact does that have? We have to do some preparation so that we can say, "It was not done in a black box; it was thought through." We need to get the space to do that.

The second point then becomes: okay—you do engagement, but who will you engage with and in what sequence? It is not obvious. All around Scotland, communities are different. In this part of the country, communities might be much more geographically defined. In other parts of Scotland, the interface between urban and rural tends to get a lot more fluid. In some areas, communities are not so easily identifiable.

Another problem that I have found when we have tried to do a consultation is who turns up. We go along and we might identify a geographic community. We will find that the people are of an age. They are invariably not involved actively in one of the land uses—we do not get a lot of farmers turning up for a conversation about land use, even if it is not on an evening in the middle of February. We get a section of a population that has its own preconditions and interests. Then we have parts of what is not a physical community but a community of interest. Such people do not participate in the conversation; they reserve their ability to protect their lobby by staying outside it.

The Convener: We might come on to some of the issues that relate to engaging communities in decisions.

John Glen: I am sorry; I thought that that was the nature of your question.

The Convener: That will be discussed a bit later. I was asking how we can encourage some landowners to engage more positively.

John Glen: We can do so by giving them positive examples. My experience is that there is a population that can develop best practice; there is a population that would like to follow best practice but is looking for a bit of leadership; and there are people who do not want to engage. At least by going down the route that is proposed, it will become much clearer who are those who do not want to engage. We will be able to target that behaviour better, rather than tarring everybody with the same brush.

The Convener: Does the Cawdor Estate have a similar view? You have asked us about discussing things such as business tourism, and we take that on board. What about engaging with people? How do we encourage that dialogue?

Rachel Bromby: You made a point about engaging with landowners. In this instance, we need to look at the wider context. Landowners do not necessarily have direct and first control of the land. There is a multiplicity of interests—including specifically tenant farmers—that have long-term control over a piece of land. Landowners are often subject to so much other scrutiny from the likes of SNH and the Scottish Environment Protection Agency, so we already have to take account of a great deal of legislation. We may engage with communities to a greater or lesser extent, but there are things that necessarily stop us taking on board all the community points.

I very much agree with and echo John Glen's comments. I know that we will come on later to communities. Time and again, we find that it is those who have specific and sometimes personal interests who are looking to engage with landowners and land managers, but without necessarily gaining the wider community's opinion.

The Convener: This is about the high-level statement that we talked about at the beginning of the session, which you agreed should be debated and endorsed. The whole point is that the statement has to address some of the things that we have discussed. We have strayed on to other things, and we should probably consider who will discuss those matters and how they can be discussed with communities in due course.

Dave Thompson has a question on the Scottish land commission that will be set up.

Dave Thompson: I repeat what I asked other panellists about whether the land commission's title should include the word "reform". There is also the question whether there has to be public consultation on the strategic plan or whether the minister should just get the plan directly from the commission.

John Glen: Do I think that the word "reform" has to be specified in the bill as part of the commission's title? No—not if everybody understands what we are trying to achieve and if the job description is written properly for the commissioners.

I would separate out what is an information exchange about the day to day. There is a need to

engage on that, as engaging with people when we do not want something is different, on both sides, from engaging with them when we want something.

My answer is that I do not think that we need the word "reform" in there, as it is implicit that the purpose is to make things better. If we consider its definitions, the word "reform" separates out from "radical" to "evolution". Reform is around evolution—it involves progressively making things better, if we stick to the definitions. The word does not need to be included in the bill as part of the commission's title.

Rachel Bromby: Again, I concur with John Glen's comments. With the bill and the land commission, we are dealing with change and looking to make things better. If the word "reform" was included, that would place a permanent emphasis on change, and change for change's sake is not necessarily the right way to consider things.

Dave Thompson: I will follow up the point about the membership of the land commission and the experience and expertise on it. There is a view that the agricultural holdings commissioner should not be a member of the land commission, that those two things are separate and that they should sit totally separately. Could you expand a wee bit on your reasoning behind that?

John Glen: The challenges that agriculture faces are of sufficient import that they deserve to be treated separately. That is not just about the relationship between landowners and tenants; a fundamental challenge faces agriculture, and we need to do something about it.

A generational change is about to happen and, if we do not get the changes right in agriculture in its broadest form now, that will condemn the next generation to a pretty poor prospect. Agriculture is of such import that it deserves a look of its own.

Why might we lump in agriculture? That depends on whether the objective includes a desire to have a fragmentation of land ownership. If that is the reason why agriculture is being lumped in with land reform, that is fine, and it should be said that that is what the measures are about. However, not everybody will agree that that is the right vision for agriculture.

I am—not personally, but as Buccleuch—one of the largest farmers in Scotland. I probably have a different view on what should happen in agriculture from that of just about everybody around this table. We need to have that conversation, and we need the space to have it. I do not think that muddying it up with other considerations does it service.

The Convener: We hear what you have to say.

Dave Thompson: Is there an argument that, if the agricultural holdings issues and all the rest of it are such a big part of the debate, it is beneficial to consider everything together, with the agricultural commissioner feeding into the broader land commission debates?

John Glen: If our conversation is to be about land use, then absolutely. If it is predominantly about a redistribution of ownership, that will take away from the real debate on agriculture, which is about the future for agriculture in Scotland, how it should be configured and whether it should have the same configuration everywhere in Scotland or be different. It is a matter of getting clarity of effort.

Dave Thompson: Another point is about the range of experience and expertise on the land commission. I see that you have views about including land management experience and so on. We heard from Peter Peacock of Community Land Scotland about looking for people to go on the commission. There will be a small number of them—half a dozen. I am referring to people of vision, integrity and so on, rather than people who represent sectoral interests. Otherwise, where do we stop? What is your view?

John Glen: I agree with Peter Peacock. Having reflected more on the matter, I think that we want people who are curious, who have integrity, who can ask the questions and who know how to make trade-offs. Sometimes we might find people with experience from a land management background and sometimes we might find people from a legal background or whatever. The main thing is that they have such characteristics and the ability to carry people with them.

My advice to anybody who is starting to engage in the land use debate is to wear a safety belt and get some protective clothing, because it is really hard.

Dave Thompson: I see from your evidence that you feel that the commissioners should

"have a 'checks and balances' role within their remit to review the effectiveness and consistency of the use of public funds by the Scottish Government".

Would that "'checks and balances' role" extend to examining the use of public funds by landowners?

13:45

John Glen: Yes. As a nation, we have to recognise that we are throwing a ton of money at land use in its broadest sense, but it is not very clear what we expect in return, whether the allocation of those moneys is consistent and coherent and whether the parties that are handing out the sweeties, if I can put it in that way, are incentivising things that are coherent and consistent. We also need to look at whether those

things are consistent through time. There should be public scrutiny as regards how we spend money and what we get for it.

Dave Thompson: Would that not expand the scope and work of the land commission quite significantly? As you say, those are big sweeties.

John Glen: I think that it would, but if we are going to make a real difference with the bill, we need to consider such things. I would hate it if, after all this time and effort, we came out with a bill at the other end that did not make much difference. We would be back at it again in 10 years' time because we had not addressed the real issues this time.

At the end of the day, we have to start with a diagnostic and ask what is wrong and why what we have is not fit for purpose given what we are achieving, but we are not having that conversation.

Rachel Bromby: I will pick up on the point about the land commission and having a separate tenant farming commissioner. I know from experience that there can be some conflict between landlords and tenants, which is unfortunate. Also, because of some of the provisions in the agricultural holdings legislation, we look at matters such as rent reviews in a certain way. I appreciate that agricultural holdings will be part of another evidence session, but we need to build trust between the two parties.

We also need to build better relationships, which we can often do with the community, because we can have dialogue. At the moment, the way that things are structured between landlords and tenants means that it is an adversarial situation and we make reference to the Scottish Land Court and so forth. If we had a specific tenant farming commissioner with access to good stakeholder involvement, good legal advice and good professional advice, that would help to improve those relationships.

There is a lot of history in Scotland and a lot of baggage that we need to lose. As you can tell from my accent, I am not Scottish by birth, and to me it is quite surprising that we have this situation and there is not a dialogue between landlords and tenants. It would be good to get engagement with the likes of RICS, NFUS and Scottish Land & Estates. The people from RICS and the Scottish Agricultural Arbiters & Valuers Association act on behalf of both landlords and tenants and they could give a tenant farming commissioner valuable evidence and assistance that are perhaps currently lacking.

Dave Thompson: Thank you for that. My understanding is that the tenant farming commissioner will deal with all tenant farming issues and will add that expertise into the broader land commission discussions and debates, as opposed to the land commission dealing with tenant farming issues. I think that I am right about that.

John Glen: I will give you an example where it does make sense. We have gone through an exercise of modelling every single farm on the estate, whether it is in house or tenanted, and we are working with SRUC to try to refine those models. What does that exercise tell us? It is modelled on the basis of a top quartile performance, so I have dehumanised—if I can put it in that way—the debate, or taken the emotion of the individual tenant out of it. If I assume a top quartile performance of that definition of a farm, does it make sense and what does it deliver? The conclusion that I draw, looking at our estate, is that a significant proportion of our farms do not make any sense. The question is what I do about it.

Dave Thompson: What do you mean by sense? Do you mean economic sense, social sense or environmental sense?

John Glen: They do not make economic sense. We will get on to a debate about sustainability. I completely disagree with Peter Peacock on that.

The Convener: We will move on to information about the control of land. Sarah Boyack is going to lead on that.

Sarah Boyack: I want to pick up on your expertise and perspectives as representatives of landowners. What might be the sanctions for non-compliance with providing information to the keeper? What would be effective in getting people who own land to come to the table?

Rachel Bromby: I have not given a huge amount of consideration to the question of sanctions. The first point is that we welcome the transparency of ownership. The ultimate sanction, which we have already heard about today, would be not having the right to have the ownership or title registered by the keeper.

I think that we will see a lot of landowners voluntarily bringing forward their land ownership for registration, given the way that we are going with voluntary registration. The question of sanctions will need more consideration when we see who is not willing to register land. I do not necessarily believe that that will be estates like Cawdor and Buccleuch. There are those who do not have extensive numbers of acres under ownership but have smaller, more strategic areas of land. Until we see where the problem lies, it may be difficult to determine what the sanctions should be.

John Glen: I completely agree with that. With a bit of leadership, it can be shown that there is actually a benefit to landowners. If their land is on

the register, it will be a lot easier to carry out individual land transactions, and landowners do those all the time. When we do that off the existing systems, the research that has to be done is demanding—we have to find the paperwork, which is not where we thought it was, or the boundaries have changed and so on. If the information is in a digital format on a proper land register, it will make our internal processes a lot easier. I think that the penny will drop for a lot of people, who will see that being registered will make the business of running estates easier.

There is a bit of a hump to get over. I admire the confidence of my colleague from Registers of Scotland, John King, about his timetable. It is complicated stuff; things are not where you think they are.

The Convener: If there are any further points on that, Sarah Boyack can come back in.

Graeme Dey: My question is specifically for Rachel Bromby of Cawdor Estate. How can Cawdor Estate

"support a full land registry giving transparency of ownership and land use"

without a restriction on ownership to European Union registered entities? What evidence can you provide to support your statement that

"there are legitimate concerns regarding inward investment or existing investment"?

Rachel Bromby: I think that the stipulation of EU entities suggests that non-EU entities have nefarious intentions about land management and ownership in Scotland. Conversely, it suggests that, simply by being an EU entity or a natural person, someone will be a good manager and owner of land. As we have heard a lot today, there is already transparency about who landowners are.

I do not have any empirical evidence on legitimate concerns about inward investment. I have not prepared any studies or done any investigation in relation to that, but we know both anecdotally and from what is happening elsewhere that, if those who are heavily invested in Scottish land are finding it more difficult to be owners here, they will simply take their money elsewhere.

At the moment, good landowners and managers put a lot of money into the Scottish economy, sometimes for very little return. From an economic perspective, to lose that would be disastrous. That might be too strong a word, but I do not think that it is. We are talking about significant employment, significant money supporting rural schools and, through that employment, support for local businesses and shops. I would hate to see that go.

Graeme Dey: You are almost predicting an Armageddon there. What evidence is there that that is going to happen?

Rachel Bromby: As I said, I do not have empirical evidence and I have not prepared studies or conducted specific research. We know it anecdotally and from talking to other land managers, but I cannot give you a specific example today.

Graeme Dey: With respect, one might argue, "They would say that, wouldn't they?"

Rachel Bromby: Yes, but at the same juncture, we could say the opposite. As I said, just because one is an EU entity or a natural person, that does not mean that one has the best interests of the land or land management at heart. To rule out the investment of others is short-sighted.

Graeme Dey: How do you react to the statistic that was mentioned earlier that 750,000 acres of Scotland's land are owned by trusts? Surely we need full transparency on who owns the land of this country.

Rachel Bromby: Speaking personally, I note that Cawdor is owned in trusteeship. That is transparent—it is a matter of public record who the trustees are. Every time that we want to sell an area of land, whether it is half an acre or whatever, when we engage solicitors, they want to go through the procedures under the money laundering regulations. They want to see utility bills from the trustees and they want to know who the trustees are. They want to see copies of the trust documents. Trustees are there as a central check on individuals and they are often there to provide professional advice. Personally, I do not see trustee ownership as a problem. Trustees are guardians of the land and of estates—they protect what is there for future generations.

Dave Thompson: I am intrigued by the revelation that, if owners are identified and we get transparency and all the rest of it, there will be an exodus of money and the people will all run somewhere else. If that is the case, why do they own the land at the moment? What is the motivation? Do we just have all these altruists who, out of the goodness of their heart, look at Scotland and say, "Ah, we want to pump money in and just throw it away because it is the right thing to do"? To me, that just does not compute—it does not stack up. Are there other reasons why they do it? Do they have money that they want to clean up? What is the reason? It is just bizarre.

Rachel Bromby: On your comment about people having money that they want to clean up, the Land Reform (Scotland) Bill is not the place to look at that. We mentioned that earlier. We did not specifically mention Police Scotland, but those are

criminal activities and not something that the bill is here to deal with.

Dave Thompson: You have not answered my question, though. Why do people want to put money into Scotland? If transparency would stop them doing it, that means that they must have something to hide.

Rachel Bromby: Not necessarily. Additional regulation often tends to come in. It is not the transparency that I have an issue with; I have an issue with the initial drafting of the proposed legislation. That has now been altered, which we welcome. If non-EU entities could not hold land, they would not necessarily have the opportunity to invest in that land.

My experience is of Cawdor, which is not in foreign ownership but very much in UK ownership and, indeed, Scottish ownership. We invest in land because we believe in a dynamic rural economy and in employing people. We believe in managing the landscape to deliver public good and what the public want.

14:00

John Glen: I seek a bit of clarification, because we seem to be conflating two different things. There is land that is held in trusts and land that is held in trusts in regimes that are not prepared to share information should a request be made. I am not clear in my head—not knowing the source of the figure of 750,000 acres—whether we are talking about land that is held in trusts or the subset that is held in trusts that are registered in tax regimes that are not prepared to divulge information.

Dave Thompson: It is much simpler than that. Perhaps I misheard earlier, but why would excluding non-EU entities from land holdings in Scotland lead to people taking their money out of Scotland?

John Glen: It is one more billboard slogan. As with so many of these things, if people are really determined to come to invest, they will look beyond the headlines and make their decisions on the basis of the reality of the situation.

Sometimes, how we put our banner up and say that we are open for business does have an effect. However, I do not know whether anyone who was serious about investing would be turned off just because they had to set up an EU-registered company. Anyone with a genuine interest will look beyond what many might perceive as a slight signal that, if someone is not one of us, they cannot come here.

The Convener: We must move on to

"Engaging communities in decisions relating to land".

Alex Fergusson has a question.

Alex Fergusson: The panel will have heard the previous discussions relating to part 4. I do not want to repeat blindly what I put to the previous panel. John Glen started to say something about the matter earlier. Do you have anything to add to our previous discussions on engaging communities? What are your views?

John Glen: Each type of consultation is different, depending on whether what is proposed is a major change, on the scale of the change and on who the communities are.

We need to look at what is happening on the other side of the engagement. I guarantee that, no matter how consultation and engagement is done, it will be wrong. The wrong people will have been consulted in the wrong sequence, and those who are consulting will be pilloried. I have tried every way, and each time someone has found a reason to give me a hard time because I did not do it right. That is just a fact.

We also need a conversation about what a community is and whether, in consultation processes, we should have a mechanism that says that people must engage in the consultation process if they want to comment. It should be a case of use it or lose it. People cannot stand aside from the process but then moan and bitch about it afterwards or go to the press. Even in the case of politicians, one politician will say, "Well done. That's exactly what we want to do," and another will be off to the press saying that it is a conspiracy. We need to be a bit more realistic about what carrying out consultations is actually like.

I will give the committee an example. Representatives of Canonbie and district residents association came to see me. I asked why I was to engage with them rather than with the local authority and they said that the local authority did not represent them, although I had thought that that was the democratic process. I had also engaged with the community council but was told that it did not represent the residents association either. I asked whether a person had to be a resident of Canonbie in order to be in the residents association and was told that it included friends of the residents of Canonbie. Other interests, non-governmental organisations or whatever had been bussed in. The process is rather more complicated than we seem to be making out.

It is not easy to define what organisations should be consulted. Should they be democratically based? The turnouts for some of them are really low. It is no wonder that people say that such bodies do not represent them if there is only a 50 per cent turnout for a community council meeting. Also, when you look at the age

group of the people who are involved, you have to ask whether they are really making decisions about what is in the interests of the next generation and of economic development or whether they are making decisions that reflect the view, "I moved here because I wanted a quiet life and I do not really want anything to happen."

The Convener: The community councils do not make decisions; they are consulted. We must be much more specific than that.

John Glen: Okay.

Alex Fergusson: We have talked about guidance and about the fact that it is now generally accepted that the guidance should be endorsed by Parliament so that the process has an endorsed set of rules. You have asked how we should go about engaging with communities. I am not happy about the fact that the details of that are yet to be arrived at, but those will evidently come in time, although I get the impression that that does not give you a lot of comfort that the process will be meaningful. Can either of you give examples of how, from an estate manager's point of view, you think that meaningful engagement with a community can take place?

Rachel Bromby: That has already been alluded to at some length, and I do not want to repeat the comments that have been made or the points that John Glen has raised. We have come across the same issues.

This may not answer the question directly, but I will give the example of our recent consultation on our new long-term forest plan. As Sarah-Jane Laing mentioned, such consultations can involve sitting in draughty halls. In fact, we had a good turnout and a lot of the comments were taken on board. However, there was a lack of understanding among the community and residents as to what that engagement was about, because a lot of the points that were raised were about general land management issues. People were more interested in whether gates should be open or locked and whether there were dog-fouling issues—day-to-day management matters that could be addressed in different circumstances—than in the impact on the landscape of particular plans for planting or felling or of the cultivation of certain species.

That is where the guidance must come in. I am not saying that land managers are perfect or that we know everything, but we are learning all the time and we have a longer-term view than some members of the community. Communities—whether they are communities of place or of interest—often have single-issue views that they want to have represented and do not look at the strategic, long-term management issues that we are interested in and on which we sometimes want their input.

John Glen: We must separate consultation about a significant change from communication of what we are doing from day to day. Communication about day-to-day business can take many different shapes. Will guidance be issued that fits everything? I would like to believe that such communication is down to people who can get on with it talking to various parties. A consultation process in which you are looking to change something is more complicated and is not the same thing.

The Convener: Does that answer your question, Alex?

Alex Fergusson: I think that it does.

The Convener: Let us move on to the

"Right to buy land to further sustainable development".

Angus MacDonald: We can see, from the submissions that we have received from Cawdor Estate and Buccleuch Estates, that there seems to be a mixed reaction to the idea of buying land to further sustainable development. Cawdor Estate, for example, has stated:

> "We welcome the principle of community ownership especially where a landowner is in breach of good land management and nefariously treats tenants and other stakeholders."

However, Buccleuch Estates has stated that

"it is unclear why there is a requirement for another piece of legislation and where this fits with those already in place".

How should the Scottish Government establish whether a landowner has breached good land management or has nefariously treated tenants or other stakeholders?

Rachel Bromby: One of the issues with the bill as it is drafted—again, this has been mentioned at length—is its lack of clarity around the definitions of "community", "public good" and "sustainable development". Where a landowner actively manages the land through farming or engaging with tenants and communities, there is a way of demonstrating what is for the public good and what is for the good of dynamic rural management.

Perhaps there is some difficulty in saying that someone is a particularly bad landowner. What is the definition of that? As with "sustainable development", the view of one person or particular interest group will be diametrically opposed to those of others. It is not my job to say how the term should be defined; my job is to ensure that the Cawdor Estate is managed to the best of my abilities for the benefit of the owners of the land, those who are in control of it and other participants. We have a large number of

residential tenants as well as farming tenants, and we provide a lot of housing, accommodation and jobs in the local community and area.

A lot of legislation is not always good, but more careful thought and definitions need to be put into the legislation that is to be enacted rather than into secondary legislation on which there will not necessarily be an opportunity to consult.

John Glen: I will explain our position on the issue. If compulsory purchase is not working, why not change that bit of legislation rather than create another bit of legislation? That is really the basis of the point. Unlike Peter Peacock, we have an issue with the definition of "sustainable economic development". I am not sure that the word "economic" is always used. Is "sustainable development" sustainable environmentally, economically or without subsidy? What are we talking about? That is not obvious. If something is going to be taken away from somebody, they deserve a bit more clarity.

Compulsory purchase has some rigorous methodology around it. If that does not quite fit, maybe it needs a bit of adjustment. I would not just leave that and create something else because it would be a bit hard to adjust it; I would tackle the issue.

The Convener: Graeme Dey has a supplementary question on that point.

Graeme Dey: I appreciate the opportunity to air the issue. Much of the debate has centred on bad landowners who are not utilising the land that they manage for the public good. What about tenants who act in that way? I want to explore that briefly. What is your view on the idea of toughening up the certificate of bad husbandry provisions to allow landowners to recover such tenancies, but only with a view to passing on the land to non-viable units—I think that John Glen touched on that idea earlier—or to new entrants?

John Glen: I would be very much in favour of that. How many instances have there been of tenants being evicted for bad husbandry in the past 10 years? Can that be right statistically? There have been so few that, statistically, the figure cannot be representative. Objective criteria are needed. The issue will be contentious, but let us have a bit of courage. If we are going to hold some people to account to get better behaviour, let us hold everybody to account to get better behaviour. That is a good idea.

Rachel Bromby: I could not agree more with Graeme Dey's point and with what John Glen has said. We are talking about not just land ownership but land management and those who are in control of land. I would love to see a tightening of the legislation for those who are not necessarily managing the land sustainably, be that economically, from a biodiversity perspective or from whatever the perspective might be. That would be superb.

Graeme Dey: You accept the rider that landowners or land managers would not get that land back to farm in hand but would get it back to issue to other tenants, in order to make their units more viable, or to new entrants. You accept that criterion.

Rachel Bromby: Definitely.

John Glen: I am interested in seeing successful agriculture. If the land-use choice that we make is that the primary products will be agricultural, I want to see the best agriculture possible performed by the best and most talented people.

Graeme Dey: That is useful. Thank you.

14:15

Angus MacDonald: As you know, we discussed with the previous panels the terms "significant benefit" and "significant harm". I will ask the question again. How do the provisions ensure that, in the interpretation of "significant benefit" or "significant harm", consideration will be given to the impact on the landowner? Do you feel that the provisions strike a fair balance between the rights of landowners and the interest of the general public in furthering sustainable development?

John Glen: I think that we should be clear about what we mean by "sustainable". Do we mean that something is sustainable environmentally, economically or without subsidy? What are we talking about? The devil will be in the detail, and it comes down to an issue of trust. The decisions will end up being judgment calls.

Angus MacDonald: Should consideration be given to providing for a direct power of ministerial intervention to buy land to further sustainable development if there is no community present?

John Glen: Yes, but only as long as there is a clearly identified framework of criteria within which that call is made. The question is whether people trust the ministerial judgment. What are the criteria by which the choice will be made? There will be lots of different opinions.

The Convener: Does that deal with all your questions?

Angus MacDonald: There is also the issue of whether, as the provisions stand, it is possible that productive farmland could be eligible for community purchase if the landowners' or the occupiers' interests do not align with the interests of the community. What is your view of such a situation?

John Glen: It would depend on what the landowner proposed to use the land for. If he or she was using it for a certain purpose, saying that the community had a better idea would lead you into difficult space, because you would then start to interfere with someone's rights to do what they wanted with their land. It is one thing to take land away from someone for bad behaviour but, if they are doing something because they have been incentivised by policy, you are in a different game. It is not about land being abandoned or neglected; it may be that a farmer has a field of barley and the community wants to put up a tennis court or whatever.

Rachel Bromby: I will make a couple of points in relation to that issue. First, it is absolutely fundamental to this debate—the matter was discussed eloquently by the NFUS earlier—that sustainable food production is extremely important. We must not lose sight of that. It is a lovely day today, but I know, from our in-hand farmers and tenant farmers, that this is a particularly difficult time due to the weather, the climate and other factors.

Secondly, the financial viability of community ownership and the community right to buy must be assessed. Under the existing legislation, there have been a lot of community buyouts but we do not know how they are being funded. Are they being subsidised? How much of the funding is taxpayers' money in the form of EU subsidies? More thought must also be given to what will happen in the future. For example, will the community be in a position to sell the land to a developer? A community should not have the right to forcibly purchase land from a landowner if that adversely affects the landowners' remaining land.

Angus MacDonald: Thank you. That is useful.

The Convener: It is, indeed.

John Glen: I will make one last point, to sound a note of encouragement. In my experience, it is amazing what you can achieve when you get everyone aligned. Sadly, my best experience started with a disaster that involved an opencast mine—it would be nice to think that we could learn lessons without starting with a disaster. The question is, how do we get everyone aligned as opposed to setting them against each other?

The Convener: Those points are well made.

We have had a good variety of opinion in the panels today. This meeting has been useful for us. As we build up a picture of the issues, we are getting a good idea of the tests that we need to use to see whether the bill works in terms of the positive engagement issues that we have been discussing.

At the next meeting of the committee, on 16 September, we will take further evidence on part 10 of the bill. We will also deal with two pieces of subordinate legislation.

I thank Rachel Bromby and John Glen as well as the other witnesses that we have heard from today and the members of the public who are present. Skye has hosted a major set of witness testimony that has allowed us a large and detailed insight into the questions of the use and ownership of land. It is vital for us to have that insight, and it is vital for the community to know that, through hosting this meeting, they have contributed to our ability to meet people in every part of the country. We will continue to do that in the next three months during this phase of our work.

Meeting closed at 14:21.

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