



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 28 October 2015

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**Wednesday 28 October 2015**

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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**31<sup>st</sup> 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:**

Gareth Baird (Crown Estate)

Rob Booth (Crown Estate)

George Burgess (Scottish Government)

Alan Laidlaw (Crown Estate)

Bridget Marshall (Scottish Government)

Aileen McLeod (Minister for Environment, Climate Change and Land Reform)

Ronnie Quinn (Crown Estate)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 28 October 2015*

*[The Convener opened the meeting at 10:03]*

### Decision on Taking Business in Private

**The Convener (Rob Gibson):** Welcome to the 31st meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. Before we move to the first item on the agenda, I remind members to switch off their mobile phones if they might make a sound that would interfere with our concentration or with the broadcasting system. Some committee members will use tablets during the meeting, because committee papers are provided in digital format.

Agenda item 1 is to decide whether to take in private item 5, which is consideration of our work programme. Is that agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 [Draft]

10:04

**The Convener:** Under agenda item 2, the committee is to consider the draft Environmental Regulation (Enforcement Measures) (Scotland) Order 2015. It has been laid under affirmative procedure, which means that Parliament must approve it before the provisions can come into force. Following evidence, the committee will, under agenda item 3, be invited to consider the motion to approve the order.

I welcome to the meeting the Minister for Environment, Climate Change and Land Reform, Dr Aileen McLeod, and Scottish Government officials George Burgess, who is deputy director of the environmental quality division, and Bridget Marshall, who is also from the environmental quality division.

I invite the minister to make a short introductory statement.

**The Minister for Environment, Climate Change and Land Reform (Aileen McLeod):** Good morning, convener. I thank you and the rest of the committee for inviting me here to discuss this important order, which is a key component of our wider better environment programme with the Scottish Environment Protection Agency.

Scotland's environment is a vital natural asset; protecting it is not just a valuable end in itself but is essential for our economic prosperity and the health and wellbeing of people in Scotland. Although everyone in this country has a part to play in helping to look after our environment, it is essential that bodies that have statutory obligations to protect and improve our environment, such as SEPA, have the powers that they need to do that job effectively.

The vast majority of individuals and businesses in Scotland already comply with the relevant environmental regulations. Indeed, a significant number of them go beyond compliance in recognising that waste reduction, resource efficiency and other good practice are not just beneficial for the environment but make good business sense.

However, when individuals or businesses deliberately or negligently harm Scotland's environment, it is essential that SEPA has the right tools to protect our environment and communities, and to ensure that legitimate businesses are not undercut by criminals. It is simply unacceptable

that anyone should profit by damaging our environment.

The order will implement most aspects of chapter 2 of part 3 of the Regulatory Reform (Scotland) Act 2014 by making provision for a range of new enforcement measures for SEPA, which include fixed and variable monetary penalties, enforcement undertakings, non-compliance penalties and costs recovery notices. Those enforcement measures will provide SEPA with a better range of interventions to tackle poor performance, non-compliance and environmental crime, and will help to create a level playing field for businesses. They will also help SEPA to take a preventative approach by facilitating early engagement and intervention to prevent compliance issues from escalating and becoming prolonged or, through their deterrent effect, by preventing such issues from arising in the first place.

SEPA is well aware of the significance of the additional powers and responsibilities that we propose to give it, and it is committed to ensuring that the measures are used responsibly. In addition to the safeguards in the order, such as the right of individuals to make written representations and to appeal against enforcement decisions, SEPA is putting in place a wider range of safeguards to ensure that the new measures are used proportionately and effectively. Those safeguards include comprehensive training on the intent behind and the use of the new measures for SEPA officers, and the establishment of a robust internal review process that is designed to ensure appropriate and consistent use of the new measures within SEPA.

In addition, SEPA has recently completed a public consultation on its new enforcement policy and revised enforcement guidance. Those key documents provide transparency on the way in which SEPA will make enforcement decisions, and they set out not only what SEPA expects of regulated businesses, but what regulated businesses can expect from SEPA.

It is important to recognise that the new measures are part of a wider framework of environmental protection and that they will not be used in isolation. SEPA will continue to refer significant, persistent and deliberate offending to the Crown Office and Procurator Fiscal Service for consideration of whether to prosecute, and close working between SEPA and the COPFS will be a key aspect of successful operation of the new framework.

The partnership working between SEPA and the COPFS will be underpinned by guidelines from the Lord Advocate, which will be issued shortly. Those guidelines will ensure that the new enforcement measures will be applied consistently and

proportionately as part of the range of sanctions that are available, including prosecution.

Stakeholders have played a vital role in helping to develop the new enforcement measures, so I take the opportunity to thank all those who responded to the consultation or engaged through other means. The positive feedback that we have received has been vital in shaping our proposals, and I encourage stakeholders to continue to engage as we deliver the rest of the better environment regulation programme.

I am happy to answer questions.

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

We have a number of questions on the draft order, the first of which will be asked by Graeme Dey.

**Graeme Dey (Angus South) (SNP):** Good morning, minister. First of all, can you outline for us how restorative action will be monitored in practice? How will SEPA have the physical resources to oversee the restorative action that is being undertaken?

My second question is about the appeals process. I never thought that I would see the day when we would be talking about swift and affordable access to justice and a light-touch approach with reference to the Scottish Land Court, so I would welcome a clearer understanding of how that process will work.

**Aileen McLeod:** Bridget Marshall will pick up your first question, and I will be happy to respond to your second, about the appeals process.

**Bridget Marshall (Scottish Government):** The measures on restorative action, particularly the enforcement undertaking, are designed to ensure that the focus of enforcement is on restoring the environment. The whole purpose of the tools is to ensure that the environment is restored, but perhaps to ensure that in a more formal manner than is currently the case.

I think that Graeme Dey's question was about how SEPA will ensure that restorative action is carried out. The enforcement undertaking is perhaps the main vehicle for ensuring restoration of the environment, instead of moneys being taken away through fines that go off to the Scottish consolidated fund. Failure to comply with an enforcement undertaking will mean that SEPA will go back almost to square 1 and issue a fine or refer the offender to the fiscal. It will be part of the process of ensuring that restoration of the environment occurs under an enforcement undertaking; SEPA is structuring itself to ensure that those enforcement undertakings are complied with.

**Graeme Dey:** Are you confident that SEPA has on the ground the resources to ensure that restorative action is being taken? After all, someone will have to check that.

**Bridget Marshall:** SEPA is developing a process whereby it will ensure that it has sufficient resources in place to monitor compliance with the enforcement undertakings.

**The Convener:** But does it have the staff to do the job?

**Graeme Dey:** That is, indeed, the question, convener.

**The Convener:** That is the nub of the matter with enforcement. It is a bit like councils having enough people to ensure that building regulations are complied with.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Surely an offence will have been determined by SEPA staff in the first place, so the matter can be monitored thereafter.

**The Convener:** We are just exploring the process.

**George Burgess (Scottish Government):** The initial stages of the process will be the same no matter whether a case is heading towards being reported to the procurator fiscal or being dealt with under one of the new enforcement measures. Reporting a case to the procurator fiscal and then taking it through the courts is quite resource intensive; the order provides an alternative use of SEPA resource—that would otherwise be put into a court procedure—to work with businesses and to concentrate on restoration of the environment. It is about redirecting the resource that SEPA already has towards a better outcome for the environment instead of the matter simply being pursued through the courts.

**The Convener:** Thank you.

**Aileen McLeod:** On Mr Dey's second question, the order provides for a robust appeals process, making use of the expertise and experience of the Scottish Land Court. The use of that court as the appeals mechanism is a response to stakeholder desire for an appeals route that is independent of Scottish ministers, and it will provide for appellants immediate and affordable access to justice.

After discussions with the Scottish Land Court, we have taken the opportunity in the order to adjust its rules to ensure that cases can be dealt with by written submission and to limit the circumstances in which expenses can be awarded, and we have also adjusted the Scottish Land Court (Fees) Order 1996 to make applications for appeal free. Those amendments will simply ensure that the Scottish Land Court can

provide an accessible, swift and low-cost appeals system.

**Sarah Boyack (Lothian) (Lab):** I am very interested in the principle behind the statutory instrument. It makes a huge amount of sense to me. Waste crime is a huge problem not just in my region, but across Scotland. How will the new legislation assist in getting swift action on poor environmental quality and on the damaging waste-crime problems that scar many of our communities?

10:15

**Aileen McLeod:** In general terms, SEPA currently relies on quite a narrow range of enforcement tools and, ultimately, on referral for prosecution to tackle non-compliance and environmental harm around issues such as waste crime. We want to empower the agency to take a direct but proportionate approach to protecting our environment. The new powers that will be created by the order will certainly play a key role in enabling SEPA to take a preventative approach. The enforcement measures will help to deter non-compliance in the first place, but they will also enable SEPA to intervene much earlier than it could before the order, which will prevent cases of non-compliance escalating or dragging on for months and years.

**George Burgess:** As the minister said, the order is part of a much wider spectrum of measures. For some of the serious waste crime that I know a number of members have seen in their constituencies, the order will not necessarily provide the solution. That will, instead, come through the other measures that we have implemented in the Regulatory Reform (Scotland) Act 2014. The legislation will give additional powers to the court to ensure that the financial benefit of offending is taken out through any penalty that is imposed. It will also give improved powers of entry, search and seizure for SEPA. At the top end, which is unfortunately where a lot of our waste crime is, other parts of the act will help SEPA to deal with crime. However, as the minister said, at the lower end, where the people who come within SEPA's compliance spectrum are the chancers rather than the outright criminals, the order will give SEPA a bit more hold on them to guide them back to the straight and narrow, rather than see them head down towards the criminal end of the spectrum.

**Sarah Boyack:** I welcome that answer. Will the minister commit to there being a review and a monitoring process? Waste crimes are problematic—they are a huge environmental justice problem—so it would be interesting to see how the combination of measures works in practice. I suggest that information be split

according to crime type, which would make the process more transparent for everybody, and help to achieve the preventative impact that you are trying to make.

**Aileen McLeod:** I agree with that; I am happy to do that.

**George Burgess:** I will just add that the environmental crime task force, which has been running for a couple of years, is looking hard at waste crime. There is also the opportunity for Parliament and the committee to be involved through section 52 of the Regulatory Reform (Scotland) Act 2014, which commits Scottish ministers to providing to Parliament an annual report on the operation of part 3 of the act, including on the measures that are being referred to, on our new authorisation framework and on the new court powers. We will be providing an annual report to Parliament on that whole range of activity.

**The Convener:** That is fine. That would give the committee the chance to look at the issue. That is one to write down for next year.

**Dave Thompson (Skye, Lochaber and Badenoch) (SNP):** Good morning minister and colleagues. Are you confident that the Scottish Land Court has the capacity to deal with the measures? There have been issues in the past in that regard. My colleague Graeme Dey alluded to the fact that the Scottish Land Court can take a long time to deal with cases.

**Bridget Marshall:** We are working very closely with and have had many discussions with the Scottish Land Court. It is confident that it has the capacity to deal with cases. We are not expecting a huge volume of appeals. Each year, and particularly at first, we will phase in measures, so the volume of appeals is expected not to be that high. The SLC is confident that it has sufficient resources. As I said, we have worked with it to adjust its procedure in the order so that what is created is a forum that works effectively and is cost effective.

**Dave Thompson:** Thank you. I have a couple of other questions. It is good to see in the policy note on the order that the SLC will be able

“to determine on appeals without a formal hearing where appropriate or where both parties agree.”

Is SEPA going to be encouraged to agree to such things? Will there be a presumption in favour of SEPA agreeing not to go through a formal hearing?

**Bridget Marshall:** Where it is an appropriate case—we have in mind the fixed monetary penalty of, say, £300, where the appeal issues should be relatively straightforward—SEPA will be encouraged to deal with the matter through written

submissions. It will not be appropriate to deal with more complicated cases in that way.

**Dave Thompson:** I imagine that much of the time the appellants—the businesses—will be happy with a truncated process, but SEPA might think that it is not in its interests to follow that. I just want to get it on the record that there is a presumption that SEPA would, wherever possible, go for the shorter process, which does not involve a formal hearing.

**Bridget Marshall:** There are benefits for SEPA as well as for businesses in following the truncated procedure in appropriate circumstances; that presumption will be there.

**Dave Thompson:** Finally, it is good to see that expenses will not be awarded in relation to an appeal, except in relation to any court fees paid. That is fine, but if it goes to a formal hearing, an appellant may well have to engage lawyers and so on and could run up pretty substantial expenses with no way of getting them back. Will it not discourage a business that SEPA has accused of a crime from engaging in an appeal if its expenses could run into many thousands of pounds?

**Bridget Marshall:** We considered that issue in detail. There are arguments on both sides, but on balance we decided to create an appeal forum that does not encourage the engagement of expensive Queen’s counsel or lawyers to defend a case where doing so is perhaps not necessary. We felt that removing the usual expenses rule, where expenses follow the event, would create an incentive for people to represent themselves, rather than employing lawyers. That goes for SEPA as well as for businesses.

**Dave Thompson:** It might be difficult for a business to represent itself. SEPA has resources and so on. It is fine that the business would not be liable for SEPA’s legal expenses, but if it is a difficult case, the business might need to employ counsel and so on, which could be expensive. That might discourage it from appealing a SEPA decision.

**Bridget Marshall:** We accept that. The balance to that is that it might be a disincentive for small businesses to appeal if they felt that they may be exposed to the possibility of having to pay SEPA’s expenses. There is a balance—

**Dave Thompson:** I was not talking about SEPA’s expenses, but about the expenses of the business—the cost of hiring a QC.

**Aileen McLeod:** We were of the view that for some appellants, particularly small businesses and sole traders, the potential of being held liable for SEPA’s costs was a disincentive to making an appeal. That is clearly undesirable. Our intention was not to discourage appeals, but to provide an



appeals system that offers fair, swift and cost-effective access to justice. The order limits expenses either way to cases in which a party has acted unreasonably in bringing or conducting proceedings. We think that our approach, together with the removal of the requirement for appellants to pay a fee to lodge an appeal, strikes an appropriate balance between affordability and fairness.

**Dave Thompson:** I still do not think that you have answered my question. An appellant will still have to pay their own legal fees, which could be substantial.

**George Burgess:** Yes, an appellant will have to pay their own fees. There is the provision that if there has been a serious failure on the part of SEPA—if it has got the whole thing completely wrong—and the appeal is successful on that basis, the court can award expenses against SEPA. It is worth remembering that the alternative, for the majority of the more serious cases, would be to pursue the case through the criminal courts, where the expenses and what is at stake would be considerably higher than anything that is provided for through the order.

**Dave Thompson:** Okay, thank you.

**Claudia Beamish (South Scotland) (Lab):** The main points that I wanted to highlight have been raised by other members, so I will not rehearse them. I endorse the comments that have been made. It is important that the issue is revisited, and I hope that we can discuss it in relation to our work programme and our legacy paper.

I am interested in the issue of the partnership working between SEPA and the Crown Office and Procurator Fiscal Service, in view of the fact that the idea is to resolve environmental difficulties rather than getting people into the courts—other than in cases involving, for example, organised waste crime, which would be dealt with differently, as George Burgess has pointed out. Having been on the committee when it dealt with the Regulatory Reform (Scotland) Bill, I hope that such partnership working will be possible.

**Aileen McLeod:** That is why we are producing the annual report. That will go to the committee, which will be able to scrutinise that issue.

**Angus MacDonald (Falkirk East) (SNP):** My point on waste crime has already been covered by Sarah Boyack and Claudia Beamish.

From a constituency point of view, I welcome the order. The minister and her officials, including George Burgess, will be aware of instances in the Falkirk district and elsewhere where even licensed waste-management operators have regularly breached environmental regulations, and there

have been regular non-compliance issues with certain operators.

Taking on board Mr Burgess's point that other parts of the legislation will help, it is fair to say that, like me, SEPA officials have been exasperated in dealing with some of the rogue operators. I hope that SEPA will use some of the new monetary penalties and enforcement powers to good effect and will not hesitate when action is required. There have been cases in which there has been a perception that SEPA was reluctant to use its powers. I hope that that will not be the case in the future.

**The Convener:** I see that our panel members are nodding in agreement with you on that point.

**Michael Russell (Argyll and Bute) (SNP):** Politicians are never happier than when they are talking about penalties of one sort or another, which always makes me slightly nervous. I was certainly concerned to hear Mr Burgess use the words "entry, search and seizure".

I want a reassurance from the minister that SEPA's success in being proportionate and persuasive with regard to changing its thinking about the environment in Scotland and regulation will remain its primary focus and that the easier approach of simply applying fines and saying to people that they are malefactors and will be punished is not the default option.

SEPA has changed a lot in the past 10 years. That change has been successful because it has changed the climate in which environmental regulation is undertaken and the way in which we all regard the environment. I am seeking reassurance on that. I know that this is out of context in the sense that this is just one item in the armoury. However, I hope that it will not be overemphasised because it is easier to regulate in that way than it is to do so through the very effective approach that SEPA has been using up to now.

**Aileen McLeod:** I agree and I can reassure you on that point.

**Alex Fergusson:** My question follows on neatly from Mr Russell's question. I fully accept that my question is not related to the intention behind the order, but I seek some assurance on this matter. Where will the money go if penalties are imposed?

**Aileen McLeod:** In order to avoid the extremely low risk of penalties being issued for purely financial reasons, income that arises from monetary penalties that are imposed by SEPA will not be retained by SEPA. Article 12 of the order says that any penalty that is received by SEPA must be paid to Scottish ministers, and Scottish ministers would then pay that money into the Scottish consolidated fund.

10:30

**Alex Fergusson:** That very nearly completely answers my question. I am grateful that you talked about income arising from the penalties—I would hate there to be any possibility that this could become an income-raising mechanism.

Can you confirm that any money that goes into the Scottish consolidated fund through that mechanism will not be taken into account when the Government determines SEPA's budget in the following years?

**George Burgess:** I can confirm that. It will go into the wider Scottish consolidated fund. It will not be attributed to SEPA. We will not be performing any sort of netting-off exercise.

**Jim Hume (South Scotland) (LD):** To go back to Dave Thompson's point, you have clarified that the intention is that, if an appellant is unsuccessful, SEPA would not automatically make an expenses claim against them. However, the order also talks about situations in which the court considers that

"a party ... has acted unreasonably",

which means that SEPA could try to get its expenses back. Of course, if a person was unsuccessful in their appeal, they would be deemed to have been guilty of causing environmental damage. Would that in itself be deemed to mean that the person had acted unreasonably in lodging the appeal? I just wonder how strong the term is. I also wonder about the likelihood of SEPA seeking costs.

**George Burgess:** The test of reasonableness is about behaviour—whether the appeal is completely without grounds and whether the appellant has conducted themselves in court in an inappropriate manner. The question is not simply whether someone wins or loses on the merits of an appeal. If someone puts forward a perfectly reasonable appeal but the court decides not to grant that appeal, that is not the sort of case in which SEPA would seek, or the court would grant, expenses.

**The Convener:** As there are no further questions, we move to agenda item 3, under which the committee will decide whether to recommend approval of the order. The motion can be discussed for up to 90 minutes, but I think that quite a lot of the questions have been answered. At this point, only the minister, not the officials, can answer any questions.

*Motion moved,*

That the Rural Affairs, Climate Change and Environment Committee recommends that the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 [draft] be approved.—[Aileen McLeod.]

*Motion agreed to.*

**The Convener:** I thank the minister and her officials. We will have a brief suspension.

10:33

*Meeting suspended.*

10:35

*On resuming—*

## Crown Estate

**The Convener:** Agenda item 4 is to take evidence from representatives of the Crown Estate in Scotland on the organisation's Scotland annual report and to get an update on the devolution of the Crown Estate in Scotland. I welcome Gareth Baird, Scottish commissioner; Ronnie Quinn, general manager for the Scotland portfolio and head of ocean energy; Alan Laidlaw, rural and coastal portfolio manager; and Rob Booth, head of legal services with the Crown Estate in London. Good morning, gentlemen. I invite Gareth Baird to make a short opening statement, if he wishes to do so.

**Gareth Baird (Crown Estate):** Thank you for inviting the Crown Estate to provide oral evidence to the committee and for allowing me to make brief opening remarks. Eleven months have passed since the publication of the Smith commission report, which recommended devolution of the Crown Estate's management functions in Scotland. I have been the Scottish commissioner for more than six years and I can genuinely say that, in all that time, I have had the highest respect and admiration for the Crown Estate team in Scotland. In many ways, the past 11 months have been the proudest spell of my tenure as commissioner and the period in which I have seen the team at its finest.

Our team in Scotland has continued to perform strongly, day in and day out, and the Scotland annual report that we published in June contains examples of the great work that the team has been doing and continues to do. Those positive results, which have been achieved in a challenging and uncertain time for our business, are a testament to the determination, dedication, expertise and resilience of our people.

As well as the day job, the team has been doing a power of work to prepare for the transition to the new body that will inherit our responsibilities, although we are still not sure exactly what it will be. Ronnie Quinn, who is seated next to me, has been appointed general manager of our Scotland portfolio, which is a Scottish operating division with its own business plan, management information and financial reporting. That arrangement, which takes effect from 1 April 2016, is designed to ensure that we are in the best shape possible to take forward the transition of the business and that we play our part in delivering a prompt, smooth and seamless transition to the new devolved operation. I am sure that Ronnie will have the chance to explain our plans in more detail later.

I am proud of the results that are set out in the Scotland annual report, of the conscientious work that we are doing to deliver devolution of our functions in Scotland and of the way in which our staff have performed through a challenging but successful year. I am confident that our people will make a big success of whatever new devolved arrangements are introduced. Until that time comes, we will continue to perform strongly and do all that we can to minimise uncertainty for our customers and staff and for the communities that we work with across Scotland.

We are delighted to be here to update the committee on our recent activities and achievements, and we will do all that we can to assist you in your deliberations.

**The Convener:** Thank you for that opening statement. We have a number of topics to discuss. Jim Hume will lead on the first of those.

**Jim Hume:** Mr Baird said that a power of work has been done on the transition. Some of the people who we have talked to, particularly farming tenants, are concerned about the management of the estate after devolution and throughout the transition period. How much work has been done on that? Where do you see it going? Do you see the functions being devolved to local authorities and would you recommend that? You might not want to comment on that. Alternatively, should there be another body that is perhaps directly responsible to ministers? It would be interesting to hear your thoughts on where the power of work regarding the transition of farming tenancies is going.

**Gareth Baird:** The extent of devolution is entirely a matter for Scottish ministers, but Alan Laidlaw can comment on our communication with our tenants.

**Alan Laidlaw (Crown Estate):** There is a lot of uncertainty out there, which is probably reflected in the evidence that the committee has received. I know that the committee spends a lot of time out and about and receives a great deal of feedback, and we do the same.

The key for us is to ensure that we manage the uncertainty that we know about and that business as usual continues. We also want to ensure that there is a sensible approach to the longer-term side of things.

There is an element of reassurance in that, although change is coming, we are ensuring that tenancy obligations will continue. That is the aspect on which most people seek clarity quite quickly, and many are comforted by the protection that is given under the Agricultural Holdings (Scotland) Act 2003 or wherever their lease may sit.

More often than not, the difficulties come when tenants look beyond transfer and seek assurance about what may or may not happen. We cannot offer any cast-iron guarantees about that, but we are spending a lot of time talking to tenants and ensuring that they are aware of the process.

I am aware that the committee has received representations from groups of tenants who are getting together, taking support and advice from NFU Scotland, the Scottish Tenant Farmers Association and others, and ensuring that they have a voice throughout the process. Those tenants are also involved in the ministerial stakeholder group, to ensure that they have a good opportunity to influence the process.

We are spending a lot of time on ensuring that tenants understand where in the process we are, when key decisions will be made and how they can influence those decisions. We hope that we are doing as much as we can, but we will continue to do that work as the process evolves.

**Jim Hume:** Has there been any interaction with local authorities? Some of the tenants are concerned about responsibility being devolved purely to councils, which might not have the expertise. Indeed, local authorities might feel that they do not have the expertise—I am not sure about that.

**Alan Laidlaw:** As Gareth Baird said, the future decisions are a matter for the Government. Ronnie Quinn and I meet the councils regularly. The next round of meetings is just starting: we have Orkney, Shetland, Highland, Argyll and Bute, and Moray booked in the diary in the next six weeks, and I will go up to Moray on Friday morning to catch up on some of those elements.

**Gareth Baird:** I can give Mr Hume a practical example of the interaction that we have had. About a fortnight ago we were up on the Glenlivet estate. We are working in collaboration with the Moredun Research Institute, which is a world-leading animal disease centre that is based to the west of Edinburgh. We brought research scientists from the Moredun centre together with our tenants on the Glenlivet and Fochabers estates to discuss animal disease and animal productivity. Alan Laidlaw often talks about adding value, which we are trying to do with all our stakeholders. We went to one of our tenants' farms with those research scientists, and fantastic engagement went on.

There has been frustration on the scientists' side about the appliance of science, and that work allowed the scientists to get right down at the coalface of animal disease issues with our tenants. The level of interaction was superb. The Crown Estate sponsored the day, and we had a seminar afterwards in the Glenlivet distillery,

although I should say that nothing was sampled. The interaction was amazing.

A feature of our engagement with our tenants is that, every now and again, our bolder tenants are confident enough to stand up and speak their minds. On the issue that Jim Hume raised, six tenants came to me—quietly—to express their concerns about the future of what are multigenerational businesses. As Alan Laidlaw said, it is not possible for us to give them a black and white picture about that, but we explained to them that the level of engagement between the Crown Estate team and the Scottish Government ministers and officials is very high and that the need to keep the assets performing at their best for the sake of Scotland—and for the sake of their businesses—is at the top of the priority list.

10:45

**Jim Hume:** That is good to hear, but a lot of the talks will happen at Westminster. How high on the agenda is the issue in discussions with the Westminster Government?

**Rob Booth (Crown Estate):** I can confirm that it is a topic of on-going conversation. The process that we find ourselves involved in is, in effect, split into two. On one side, we are feeding into the Scottish Government and Westminster at a technical level in relation to the forthcoming legislation; on the other side, I leave it to the experts to ensure that they have appropriate interactions with the stakeholder community. Information is certainly being passed in the direction of Westminster as well as directly to stakeholders, as Gareth Baird and Alan Laidlaw said.

**Jim Hume:** Particularly the tenant farming sector.

**Rob Booth:** Yes.

**Graeme Dey:** Good morning, gentlemen. I welcome the level of detail in the 2015 annual report, which represents considerable progress from where we were three or four years ago. On page 22, which deals with the rural and forestry sector, two things jump out at me. First, you refer to the conversion of

"the majority of our Limited Partnerships to long-term Limited Duration Tenancies".

The report states that

"most of these tenancies are for 15 years, some for more than 30 years."

Given another workstream that the committee has, I am interested in teasing out how you determine who should get a 30-year tenancy as opposed to a 15-year tenancy.

Secondly, you refer to investing

“over £700,000 in tenants’ units”.

That is a considerable sum of money. However, it has been suggested to the committee that the process of repairing and investment has been put on hold to some degree since it became apparent that control of the Crown estate would be coming to Scotland. How do you react to that assertion? If you dispute it, will you give us examples of where investment has taken place of late?

**Alan Laidlaw:** Absolutely. The first question is easier to answer. In relation to the next-generation tenancies, we looked at all our limited partnerships a long time ago—probably eight years ago—in seeking to develop limited duration tenancies. Where we were looking to engage with the next generation, instead of setting an arbitrary figure of 10, 15 or 20 years, we looked at the business and the family involved and offered longer tenancies to take the next generation up to the age of 65. If the tenant was 40, they were offered a 25-year agreement; if they were 35, they were offered a 30-year agreement. The figure has an element of arbitrariness but, at the time, we thought that it was a useful discipline for families to have succession discussions on that basis, to allow retirement planning and so on.

That is probably the main variation following those discussions, and it has meant that there are some very long-term—35-year and 37-plus-year—agreements when the next generation has been ready and able to move forward. I am proud of that and of the team that works in that area, because we are now three or four years—in many cases, it is probably longer than that—into those agreements and the difference that we see is significant.

When we were at Glenlivet, Gareth Baird and I mused on the fact that the age profile of many of our estates is significantly younger than that elsewhere because we are continuing to invest in fixed equipment and ensuring that succession discussions are happening. One tenant got quite upset with me when, in talking about the next generation, I referred to him as the previous generation. However, that was two or three years ago, and he now says that that was a good moment for his family, because it gave the next generation a chance to ask, “What are we trying to achieve?”

As for investment, repairs expenditure this year is within 1 per cent of expenditure last year, so that budget is exactly the same; I looked at those figures in the past few days. Additional funds have been made available this year to look at aspects of safety, which includes electrical safety and asbestos. We have a programme of work to get the estate fully in order in relation to that before any transfer.

We are still investing capital in units. I was down in Applegirth the other day, where I stood in front of a shiny galvanised shed that is where once stood an archaic long-barn system. There are such examples and we are continuing to look at investment.

One difference at the moment is that there is a clear point in time, in the minds of the tenants and our occupiers, when change will happen. Many people know that we have had a rolling programme of investment—each year, we take projects on—and they are uncertain as to whether that will continue. I suggest that more projects have come forward in the past six months than previously came forward on average.

We are still investing and we can give you examples of that. We are taking our repair and maintenance obligations seriously.

**Graeme Dey:** What is the process for agreeing on projects for investment and repair? If someone is dissatisfied on being told that a project will not happen or that they will have to wait two years, how do you take that forward?

**Alan Laidlaw:** A dialogue takes place. When anyone maintains assets, whether it be a residential property or a commercial office block, things always need to be done. We have a dialogue; we communicate as openly as we can and make sure that the budgets that we have set work, and we approve our work plans.

In areas such as Morayshire, and particularly Glenlivet, the window for putting up new steel and concrete is relatively limited. I can think of one or two examples of work there when the tenants told us that they were not interested from mid-October to mid-May. They said that we should agree the budget for the following financial year, get planning permission in place and look to move forward post turnout of stock. That is a dialogue.

We should probably separate the repairs discussion from the investment discussion. We do as much work as we can when it is due and we retain sensible contingencies for weather events. Our expenditure on Portgordon harbour went up by more than £400,000 because of an extreme weather event there the year before. Four or five years ago, the significant snowfall in Morayshire led to a £1 million expenditure in the year that that occurred. We retain some flexibility to respond to needs on the ground.

**Graeme Dey:** Thank you.

**The Convener:** Does Alex Fergusson have a point to raise?

**Alex Fergusson:** No. I am happy at this stage.

**The Convener:** We will move offshore then, with Sarah Boyack.

**Sarah Boyack:** I want to explore where we are going on offshore issues, particularly renewables. The Crown Estate is instrumental in getting that whole set of technology going, because of its infrastructure and influence over, I think, half of the foreshore in Scotland; that is a lot of land. I want to get a sense of where that is going.

The Crown Estate's renewables investment is up by 5 per cent this year. It is a key devolution challenge to keep all that going and yet to see more benefits for local communities. Could you tell us a bit more about that? I notice that MeyGen is pretty well on the way. Can you give us a sense of what more is coming and how you will manage your way through the devolution process on that?

**Ronnie Quinn (Crown Estate):** Thank you and good morning. You are quite right to pick out the MeyGen project as a flagship project, if you like, for tidal energy—globally, I have to say. Members may be aware that the cables for that first array have been laid over the past couple of months, so that is progressing well. What is perhaps not so well known is the smaller project in Bluemull Sound in Shetland. Again, cables have been laid over the past couple of months and the kit has been laid on the sea bed for that. Not all the eggs are in one basket. The ocean energy projects are moving ahead and being installed as we speak.

We are continuing to invest in studies. A key study will be the system performance, availability and reliability trend analysis, or SPARTA. Every United Kingdom offshore wind farm that is operating is feeding into that project, which provides a benchmark for the operation and maintenance of offshore wind farms. It is useful for new entrants and for those that are already in the field to be able to benchmark themselves against what can be achieved and what can be expected, and what is and is not good practice. That is key to bringing down the levelised cost of energy and the operations and maintenance costs. That has been a key significant programme over the past few years. We are pleased that every operating offshore wind farm is now contributing to that.

Aside from that, we have been publishing data on our marine data exchange. That is now the largest collection of offshore wind speed and direction data that is available.

Looking forward, particularly on the ocean energy side, last month we brought forward a new form of leasing that is particularly aimed at small-scale—up to 3MW—devices for tidal current and for wave energy. That has not been done on a window basis; it has been kept open and should mean that a process is available when the developers are ready to go forward. They no longer have to wait for us to open a window; that form of leasing is there and ready for them to use when they need it.

We have also taken steps to simplify the documentation related to such leases and make them an awful lot simpler. One of the big things associated with that is a reduction in the number of milestones that small developers in particular had to achieve, which has been reduced from 18 to about two. That should reduce the bureaucracy for the developers, and for the Crown Estate in managing the leases.

Members will be aware that a few crunchy decisions will have to be taken by offshore wind developers in this financial year. We are working to assist them so that such developments come forward as timeously as possible. There are other projects in which the forthcoming announcement in respect of the next option for contracts for difference will be key. Again, we are supporting some of the Scottish projects in their deliberations on that.

I am still convinced that offshore wind has a significant part to play in the energy mix in the future and that Scotland has a significant part to play in that. On the ocean energy side, we are continuing to do what we can to push that industry further forward. MeyGen, and the Bluemull Sound site with Nova Innovation, will be key in driving forward technical and operational innovation. It is hoped that that in itself will increase investor confidence. That should become a virtuous circle. We will play our part to the utmost in making that happen.

**Sarah Boyack:** That was a useful overview. You used quite a good phrase when you said that there are some “crunchy decisions” coming up. This year is crucial, given what some of us would see as a big setback at the UK level. The report talks about the role that the Scottish Investment Bank will play in the Methil project. There is still the Green Investment Bank and the Scottish Government itself. Can more be done to ensure that those projects do not fall by the wayside or become things that are parked, just because of the current financial uncertainty? Is there work that the Scottish Government could do?

In the past, there was support for marine renewables obligation certificates—the support mechanism in Scotland was slightly larger than that in the rest of the UK. Are there key things that we could do in Scotland to ensure that that investment comes through?

11:00

**Ronnie Quinn:** I know from speaking to developers that they are very welcoming of the support that the Scottish Government has given them in the past. The consistency of the message on offshore renewables and offshore wind has

been noticed and is very much appreciated by the industry. Maintenance of that is key going forward.

The difficulty here will always be confidence. The level of confidence and support that the Scottish Government has always provided is key to keeping the offshore wind developers engaged and willing to invest the significant sums of money that are required to develop such projects.

**Sarah Boyack:** We have focused on the really big projects that are crucial for the future of our economy and our environment, but you mentioned in passing small-scale leasing changes. Is there a way of communicating more widely the opportunities that exist in that regard? Are you working with Co-operative Development Scotland to look at co-op models, which have really taken off in the community renewables sector?

**Ronnie Quinn:** We were keen to speak about that at the recent Scottish Renewables green energy conference in Inverness. We had the full team up there speaking to the industry and the players. I believe that we have already had 20 expressions of interest, which is a healthy thing, but if members are aware of other ways in which we can make further progress, we would be keen to hear from them.

The issue is dealt with on our website, but we are happy to speak to new developers about it. We regularly have dialogues with new developers about the opportunities that exist and what they can do. As I mentioned, a key aspect is the fact that the process is now ready for them when they are ready, which will avoid a stampede of applications just because there is a finite window. However, if members are aware of any other projects that are out there, please ask the developers to speak to us.

**Angus MacDonald:** Good morning, everyone. I want to stay with future energy initiatives. I have a constituency interest in carbon capture and storage, so I was pleased that the report gives it some prominence. I am particularly interested in Summit Power's captain clean energy project, which proposes up to 90 per cent carbon capture from a 500MW clean coal plant. I note that the report makes no mention of that project, but it mentions the CO<sub>2</sub> injections to the captain aquifer under the central North Sea.

Is dialogue continuing with Summit Power and other project partners? Are you confident that such an exciting project can be delivered? We have heard about the auction for contracts for difference. Will that have any bearing on whether the project goes forward?

**Ronnie Quinn:** You raise a number of points, which I will try to capture, but if I miss any, you can remind me.

In relation to on-going dialogue with regard to the inner Firth of Forth, a meeting is to take place next week or the week after at which a number of stakeholders, including the Crown Estate, will come together. We have been very active in bringing together the key participants. Along with representatives from the Scottish Government, the Department of Energy and Climate Change and the industry, we will try to take a number of initiatives further. Carbon capture and storage for some of those projects will be a key part of that.

Another area on which we have been active this year and published a report is the interaction between injections into a CO<sub>2</sub> storage site and how multiple injections would work. That enables the captain clean energy project to go forward. We are aware of the Shell interest in the Goldeneye site and expect financial decisions to be taken towards the end of this financial year.

Carbon capture and storage is an exciting part of the overall picture. CFDs will play a significant part in that because those investments will require a significant amount of capital expenditure to go forward and the boards that make the decisions for them will closely examine the CFD regime and their access to it for those investment decisions.

Have I missed anything?

**Angus MacDonald:** No, that covers it. Thank you.

**The Convener:** We will stay offshore at the moment.

**Claudia Beamish:** Good morning to you and your colleagues, commissioner. Having been on the committee when the Aquaculture and Fisheries (Scotland) Act 2013 was in progress, I would be interested in the appropriate person saying something about developments. I see that the Crown Estate is leasing 850 sites and that members of its staff sit on the various forums that have been set up to help to drive forward the aquaculture industry, ensure that we have appropriate marine environmental protections and develop local economies, which can often be fragile.

The annual report is helpful in addressing the research that you are doing and various other issues. Are there any concerns about environmental protection as we go forward or do you feel reasonably comfortable about the sustainable targets? I invite you also to make any other broad comments on the matter that you wish.

**Alan Laidlaw:** The other day, I was discussing aquaculture internally and asked what my team was up to. It was business as usual.

There has been a lot of change. Seven or eight years ago, as other members of the committee will

remember, there were various calls for change to consenting regimes from the aquaculture industry. The industry is in good health. It still has an aspirational growth target and is still a major contributor to Scotland's food and drink sector, as well as employment in rural communities.

The business-as-usual aspect is probably that the industry continues to deliver. It is in a period of consolidation. It still faces all the vagaries of producing a world-class food product in a wild environment—international competition, weather, food, disease and pestilence—but continues to deliver year on year.

One of the areas on which we get the biggest and most regular feedback is probably consenting. There are challenges involved in consenting and in ensuring that there is a streamlined process for the Government licensing through Marine Scotland and all the other aspects of the system, including town and country planning. That concerns all the issues that you rehearsed and the discussions that the bodies went through.

One of those issues was raised at one of our Scottish liaison sub-groups, at which we get the industry together and ask pretty much the same question as you asked us. We ask the industry what is happening and where the challenges are. Consenting probably comes through loud and clear. With that in mind, we are working with the Scottish Government on a consenting review—an independent review of how the structure works and where any key trigger points or barriers might be—with a view to making the process as simple as possible.

Aquaculture continues to be a really important sector. A lot of detailed work is going on because of change to the consenting regimes, but the industry is in a period of consolidation following change and still wants to grow significantly. It still supports big growth targets; the Government has talked a lot about them as well. I envisage that that will continue, but we must remember that the industry operates in a pretty challenging market at all times.

**Claudia Beamish:** I do not want to put words into your mouth, but are you saying that you do not have particular environmental concerns about your sites? I note that the report states that you are undertaking research into jellyfish blooms. I will not rehearse the issues that came up in relation to biomass and sea lice. None of the committee likes to mention that issue, but we have to face the fact that there is conflicting research evidence on it.

**Alan Laidlaw:** There is a strong view on that with regard to all aquaculture. We are not the regulator of aquaculture, but we are trying to ensure that developments can be achieved in a

sustainable fashion. For aquaculture, the issue of sustainable development has wide reference, from river systems, loch systems and sea systems to communities and schools.

For a long time in the aquaculture sector—in shellfish or in salmon—we have recognised that we are able to take a strategic approach and look at things on a national basis, in the same way that Ronnie Quinn talked about with regard to the energy sector, which ensures that there is good data out there to allow correct decisions to be made. That is the key role that we would continue to play so that we can look at the challenges on the ground from a much more strategic level to see how we can achieve things.

In many areas of marine planning, it is possible to end up being very insular about the small area that is of interest to a consenting body, an organisation that wants to take something forward or a community. We try to ensure that that expertise is considered at a more strategic level. That is what we should continue to do. The algal blooms issue can affect any area at any time, so we should consider it at a national level rather than look at one small area. That would be our approach, and I think that that is where industry sees the greatest benefit from us and gives us positive feedback.

The environmental challenges will always be there and they need to be discussed. The hope is that we can inform some of those discussions by considering them at a strategic level.

**Michael Russell:** I will ask about the practical devolution of some of your powers to communities. I am very familiar, as many of you are, with the work of the Tobermory Harbour Association, which I think provides a pretty good model that illustrates what the “working together for shared success” subtitle of your annual report refers to. How do you build on that model and where else could you apply it? I want to put that into the mix with the possible devolution of powers to local authorities, which might get in the way of that model.

**Alan Laidlaw:** The Tobermory Harbour Association is an example of a really strongly constituted group that works very well. You have taken evidence from Brian Swinbanks and the team from Tobermory. I think that our relationship with them goes back to 2002 and it has been an iterative, phased process—I think that phase 6 is being discussed now. As I said, the Tobermory Harbour Association is simply a well-constituted group that knows what it is trying to achieve and is au fait with working with different bodies to achieve shared success.

The local management agreements are another iteration whereby local communities and operators



can say “Look, we’ve got an interest in an area and we want to take something forward in a staged process.” I think that that works well. We have also talked in the past about mooring associations, whereby a collective group of those interested in a certain area can bring together economies of scale, organisation, maritime navigational safety and far better management on the ground.

Those are all good examples of working together well. They tend to develop best when there is a well-organised group with common interests. We have always looked to have good local management that is well structured and achieves agreement. That has been the case in our historical dealings with councils, with which we have had master agreements and things like that; we say that we should have a framework agreement that does whatever. I think that we can continue to do that.

I cannot comment on devolution to local authorities. That is a matter that is still up for discussion. We need to make sure, though, that people who understand the local marine areas are involved. That is where our greatest successes have been to date.

11:15

**Michael Russell:** This point may be for Gareth Baird rather than anyone else. There seems to be a bit of a dichotomy here. On the one hand, there is the desire of some people to get their hands on your revenue, to be blunt. Although I have criticisms of how the coastal communities fund was set up, it has been useful for coastal communities in Scotland. Local authorities are short of cash and are looking to get revenue. There is a dichotomy between the fact that people are trying to get their hands on your revenue and the issue of the powers that you have and your ability to invest in communities in the longer term in order to benefit those communities, as you have done.

I suppose that what I am saying is that I hope that you are thinking about that as you have conversations with local authorities that are keen to enhance their powers, so that they are thinking about the right use of those powers at the level at which they can make a difference.

**Gareth Baird:** That is a fair point. That is the conundrum in the use of the assets in general and particularly the use of the coastal assets for the benefit of coastal communities. You rightly identify that there is an issue about how we take that forward. Clearly, some of the assets involve liabilities. The sea bed is extraordinarily complex and there are a whole heap of commercial interests, as well as community and environmental

interests. I said before that the level of devolution is absolutely for discussion between the Scottish ministers and local authorities, and I am not falling away from that. However, I am convinced that the expertise of the Crown Estate team can help to inform decisions about how that happens and how the management should be done—that is the role that we can play. The issue of where the revenues flow is for the Government and local authorities to discuss. As long as we can keep the assets performing and, as I said, add value to them—and not only financial value—the team will have done their job.

**Michael Russell:** So, as long as a devolved structure is developed that retains the expertise of the Crown Estate, you are obviously agnostic on where the revenue runs, with the exception that there should be the ability to continue to run a profitable business that allows continued investment for the future. That is a summary of your view.

When you think about going forward, I ask you to look carefully at the role of your agents because, although I rarely get direct complaints about you, I get complaints about your agents. That might be inevitable, but it is important that communities feel empowered and able to engage with you as an organisation—that is one of the points of devolution. If agents stand between you and the organisation and perhaps do things that cannot be understood, that makes life more difficult for everybody.

**Gareth Baird:** I absolutely accept that. We have worked hard to educate our agents on how we expect them to carry out their business. I think that we have moved forward, although every now and then we will get a rogue incident—it happens. As you know, I am a tenant farmer myself, so I know that, when we inject the word “landlord”, the temperature goes up, and when we put that other word “agent” in there, things start getting a bit volcanic. Therefore, we are sympathetic to that point. As we move forward with the management of the assets, because the resource in the Bell’s Brae office is not sufficient to carry out all the on-the-ground negotiations and to provide an overview of how all the assets are performing, that function will have to be carried out by somebody somewhere. It will be really important to get people in the right mindset to carry out that function, and I am confident that we can do that.

Alan Laidlaw has much more experience of the issue than I do.

**Alan Laidlaw:** The key is to ensure that we have the right people doing the right things. The committee has previously heard from Elgar Finlay from Glendale and from Brian Swinbanks, with whom Mike Russell is familiar. Initial discussion of projects tends to be done by the agents and my

team together. Yesterday, the coastal team was up in Caithness and Sutherland working with the agents in partnership.

Looking back at the LMAs and the foreshore sales pilots, I note that with all of the kick-off meetings there has tended to be initial contact either directly to us by yourselves or other elected members or to an agent. The first proper meaty discussion involves both the agent and team members, and I think that that is the key.

The committee is hearing a lot about the general subject of managing agents. We work really closely with our agents to ensure that they know where we are heading and our direction of travel, and a lot of the work that I have been doing over the past few months has been about taking all that to the next level. We have been engaging with Scottish Land & Estates and Community Land Scotland on advice to agents, and I have been involved in the million acre target working group on the barriers to land supply and that side of things. We have worked very hard on that whole dynamic and have produced guidelines for agents. I note with interest that yesterday the Forestry Commission and Forest Enterprise issued some stuff that I thought looked very familiar and which was good to see, and I look forward to working with CLS and others to ensure that agents understand what has to be achieved on the ground. The point that has been made about mutual success is genuinely something that our agents understand.

**Michael Russell:** I find that very reassuring.

On a final, more general point, Mr Booth and I have previously crossed swords on Fort Kinnaird. Taking a motto from elsewhere, I hope that in the process of devolution what the Crown Estate in Scotland has, it will hold, and that there will be no diminution of assets.

**Ronnie Quinn:** What we are trying to do is run the business as we have always run it, which has involved an element of wheeling and dealing, moving things and selling and buying assets. To be honest, I see that as part of the business as usual process.

**Michael Russell:** Just as long as the portfolio's overall value, of which you are good stewards, does not diminish. Fort Kinnaird aside—which, to be blunt, is a fix and not one that Scotland should be happy about—I think that you have a valuable set of assets that could and should be put to work for the future of Scotland.

**Ronnie Quinn:** There is certainly no intention to undermine that value, but that is not to say that, going forward, there will be no dealings as part of the business.

**The Convener:** We understand that.

I will take Claudia Beamish next and then Graeme Dey. I believe that you want to make a small point, Claudia.

**Claudia Beamish:** In your annual report, you say:

“A personal highlight in my role as Commissioner has been the success of the local management agreements and the adoption of many community ideas and initiatives.”

I know that this is not only a numbers game, but I should point out that the committee has been following this for a long time. Of course, other members have been on the committee much longer than I have, but I have certainly been following it for the past four years, and it would be very helpful to have some detail, if not now then in writing, about how the local management agreements are developing, the numbers and the community initiatives that have been mentioned. Could you or any of your staff comment briefly on that?

**Gareth Baird:** We would be delighted to provide you with details of that, but perhaps I can give you a personal view of the matter. At the back end of last year, I think—time is running together—we were up at Lochmaddy for the opening of the new pontoons, and the injection of business and visitors into that small community has been quite extraordinary. We had a great day for the opening. That really was a community initiative, and it was driven very hard by very able people as well as a local landlord who had invested very heavily in it.

I was struck by some very blunt figures. During the season, the weekly income of the wee village shop had gone up by £1,000 and the local hotel by £3,000. Three part-time jobs were converted to full time, which, in such a wee community, is great stuff. Funnily enough, in the last two months of the season for marine leisure tourism—which, as you know, is a success in fragile communities in Scotland—over 300 yachts came to see what the new facility is like. That was a quantum leap for the community and it was enormously fulfilling for all of us to see what that initiative delivered.

**Alan Laidlaw:** That is a really good example of where the strategic meets the local. Gareth Baird has talked about the marine tourism side of things. There was a debate in the chamber on the marine tourism strategy, “Awakening the Giant: A Strategic Framework for Scotland's Marine Tourism Sector”. There will also be a marine leisure symposium next month. Taking a high-level approach to marine tourism, we can see its value to Scotland—page 21 of our annual report cites the figure of 3,000 jobs in leisure and tourism in the marine sector. However, the Lochmaddy example is of somebody taking a very local idea and using an LMA to progress it, and we are investing in it.

Elgar Finlay of the Glendale Trust, who has appeared before the committee, says that he can now see the next point in the marine tourism strategy across the water and that we need to ensure that we have proper linkages. In the past, communities have, at times, competed on the basis that they have the facilities whereas the community next door does not. However, they are now being far more strategic in ensuring that people can sail from Lochmaddy down to Skye and be suitably looked after and accommodated. I get a lot out of seeing those connections. We are now talking about the cool routes across Europe initiative, and the whole marine leisure strategy is starting to piece together. I attended the Community Land Scotland annual general meeting and spoke to somebody who had never heard of the marine leisure strategy. Seeing their excitement at the realisation that their project could connect into something very quickly and start moving at a pace that they probably did not think was achievable showed me that the connection of the strategic and the local really makes a big difference. I think that it is really exciting.

**The Convener:** I can see the next report being entitled, “We are Sailing”.

**Graeme Dey:** I want to row back a little bit—to continue the sailing theme.

**The Convener:** You have taken the wind out of our sails.

**Graeme Dey:** I appreciate that you cannot talk about the role that you think the Crown Estate ought to have in the future, but I want to explore briefly what you are capable of doing. We talk about devolving control and power down to the local authority level, but many of us would like to see it go beyond that and be concentrated in the communities. An argument against that is that the communities perhaps do not have the capacity to take on that role. However, it strikes me that the Crown Estate has expertise in engaging with communities through local management agreements and knows what it would take to see that delivered. I would welcome your thoughts on whether there might be—in theory and in principle—a role for the Crown Estate, in its new guise, in proactively helping to build capacity in communities that want to take control of their assets, so that they become empowered and have the ability to take on that role.

**Gareth Baird:** I really hope so. Alan Laidlaw will have much more experience of that.

**Alan Laidlaw:** Community capacity is something that some people understand while others do not know that it even exists. We have people, whether within the team or among the agents and our partners, who understand how to

get the most out of communities; that genuinely floats my boat. An example that is given in the annual report is Portgordon harbour, which involved some fairly difficult discussions. I was summoned to the community group’s meeting—they were pretty keen that I came and clear about what their message was—and the discussion was initially difficult. However, that has now led to a proper community-led, full-village engagement about the art of the possible. From pretty frosty beginnings, the talks have progressed to the early but green shoots of proper engagement throughout the community, which shows that the engagement that our team has been involved in has helped. That is what our team is very good at. There are other teams around—partner bodies and other bodies that you know about—which also do that well. I just want to ensure that there are opportunities for growth; I leave the politics to the politicians.

11:30

**The Convener:** I have a point about your agents or your staff visiting places. I heard Caithness and Sutherland, which are in my constituency, being mentioned. Obviously, civil servants and development agencies visit people all the time. I do not know whether you might consider informing local members about impending visits, because it would be invaluable to us to know what is going on. I make that point in a very general sense because, obviously, such meetings are usually about day-to-day things.

**Alan Laidlaw:** One thing that, in particular, our coastal agents do is record all their engagements. Giving you a picture and summary of that would probably be useful. The offer to engage with us on specific projects continues, so if committee members want to do that or if they want to see anything, I would be happy to come and do that. We will try to keep you abreast of developments.

I can tell Mr Russell now that our aquaculture team are on the ground in his constituency at the end of this week and all next week. I know for a fact that they are in Mull looking at some issues.

We will try and do our best to make sure, informally, that members know exactly what is going on in their patch. I would say that staff are out and about a huge amount. I suspect that one or two of you might get bored of an email from me saying, “Just so you know, they are on the ground.” For key engagements, we would be very happy to do that.

**The Convener:** I will turn to some issues that have not been asked about so far. I am thinking about the balance sheet and strategic issues. On the balance sheet, you point out that the property value has decreased because of the sale of

coastal and rural residential properties, for example. When you were previously before the committee, you talked about foreshore rights being sold, too. Is that included in the loss of value of assets?

**Alan Laidlaw:** No. The Carloway Estate Trust undertook a pilot foreshore sale purchase, but the amount involved was significantly further to the right in terms of the number of zeros and did not represent any change in value. The numbers were small.

That is the only foreshore sale that has gone through. It went through well, but the amount was de minimis.

**The Convener:** I will move on to a much bigger part of the overall balance and put to Ronnie Quinn a question that I have asked him before, which is about the way in which income from offshore assets is estimated. You have come up with formulae that show what you can expect. My question has two parts. Will you update us on the formula for, for example, offshore wind? How does your projection become part of your planning for your development in the coming years of the assets that you hold? We have heard about investments on the landward estates, but how does that projection affect how you think about your investments?

**Ronnie Quinn:** I am happy to say that the numbers that I have given in the past to the committee and to you, convener, are still the same. For example, the formula for round 3 remains roughly £7.6 million per gigawatt that is generated. For non-round 3 sites—the Scottish territorial waters sites—it is about £4.3 million per gigawatt that is generated. Those are estimated at 2020 values. For wave and tidal devices, the figure is—I will scale it down—about £30,000 a year for each 10MW.

In our on-going planning, that revenue has an impact only on targets that are to be met. Because of the way in which the Crown Estate operates, the revenue is put into Her Majesty's Treasury, so it does not form part of the on-going estate. The revenue stream is passed through to Her Majesty's Treasury. Going forward, those revenues will transfer to the Scottish ministers for their disbursement thereafter.

Those increases in revenue are of themselves not a significant part of the planning. However, we have to take a longer-term view on the growth of on-going revenue to meet on-going targets. I would expect the new body to be given targets by the Scottish ministers. At that stage, we would look at what is likely to be expected, how we would meet those expectations and how we would be likely to generate additional revenue to meet

the targets. Traditionally in the Crown estate, that has involved a long-term investment.

**The Convener:** Does Sarah Boyack have a question on that point?

**Sarah Boyack:** I was indicating that I want to join the queue after you have finished all your questions.

**The Convener:** Okay. I will continue the line of questions about projections. Has the Crown Estate been thinking about how it might alter its salmon fishery activities or mineral policy, given the way in which the devolved assets may pan out? Have you been thinking about how those areas might be managed? I notice, for example, that it is said to have been a dry year, so salmon catches have been lower.

**Alan Laidlaw:** All the rural and coastal operations that I look after are considered on a Scotland basis. We always make sure that we take long-term decisions. Even before the Smith discussion occurred, we would plan five or 10 years ahead and beyond. We have always thought about how those areas might look. We are keen to ensure that those assets continue to produce. To use Mr Russell's phrase, my main concern is to ensure that what we have continues to hold and to deliver.

You have picked out salmon fisheries and mines royal, or minerals, which are both significantly challenged sectors, for different reasons. Wild fish and climatic conditions on the rivers are having quite a big impact on catch numbers. The construction element and the boom in coal have had impacts on minerals. Both those sectors are more at the mercy of vagaries in variables that are outwith our control than are the rural, coastal and, to a lesser extent, aquaculture sectors. However, we are always considering what salmon fisheries and minerals can offer in the long term. I would like those assets to continue to deliver what they can deliver, but they are limited and have challenges.

**Michael Russell:** You might not be able to answer this question now, but I would be interested to hear whether the Crown Estate has a different approach to minerals in land in Scotland than it does to minerals in the rest of the UK. Unlike other areas, Scotland does not have modern minerals legislation, although it should have. What is the policy situation? It has a bearing on future possibilities.

**Alan Laidlaw:** I used to be responsible for our mineral operations on a UK basis, so I am pretty familiar with them. There are different pieces of legislation. Other than mines royal, we have limited mineral exploration opportunities in the onshore assets that we have.

**Michael Russell:** It would be interesting if you could write to us on that. These assets need to be thought about. Modern minerals legislation in other parts of Europe treats minerals in a sympathetic and environmental way, but other countries get more out of them than we do.

**The Convener:** That is an interesting point.

As Rob Booth has come along, we had better ask him a question. If we think about the assets that we have been talking about and which are part of the devolution scheme, do you see any difficulty with the fact that there are variables? We can see that the property value has gone down but, as long as the Crown Estate makes a profit, it is generally meeting the spirit of the Crown Estate Act 1961.

Part of the discussion in the Devolution (Further Powers) Committee and with the Treasury is about the removal of assets from the portfolio. Have you any further comments about that, which might elucidate matters?

**Rob Booth:** As an initial point, Gareth Baird referred to the fact that we are putting in place some new structuring for managing assets, particularly in Scotland. Ronnie Quinn has lead responsibility for that and reports directly to our chief executive officer on discharging what will be a separate business plan that is specifically for those assets.

In relation to Scottish assets, we as an organisation have a UK-wide obligation to balance enhancing the value and the return that is achieved across all our asset classes. Is that to Scotland's disadvantage? That depends on the market, the opportunities and what is the right thing to do with those assets from time to time.

In the future, I think that there will be an advantage to having a Scotland-specific body. The Scottish manager of whatever name the Scottish Government decides to give the new organisation will be able to look specifically at Scotland and will not have to weigh that against a wider holistic assessment of everything that is happening UK wide. That will undoubtedly be a more polarised and probably an easier way to look at things than doing the balancing exercise is.

As for the—split of assets is probably not the right way to describe it—devolution of our functions in relation to the economic assets in Scotland, I do not think that there has been a substantial move forward. Since I previously appeared before the committee, we have been doing a lot of work to talk Scottish Government representatives through what the assets are, what the current constitution of the Crown Estate requires on the conduct of those assets and things such as decommissioning responsibilities and other responsibilities that sit round them. I am not

aware that the ambit of what will be transferred has shifted.

**The Convener:** I am concerned about the idea of no detriment, which has been discussed in relation to the Crown Estate assets and wider questions about the devolved powers in the Scotland Bill, which is going through Westminster. Will it be up to the Scottish managers of the Scottish assets to decide how to deploy them?

**Rob Booth:** Absolutely. The use and management of the Scottish assets, subject to the caveat that I gave previously about the underlying sovereign ownership of those assets, will be entirely for the Scottish managers to decide. With that focus on Scottish assets, more could perhaps be done than we can currently do under existing legislation.

**The Convener:** We will look forward to that debate in due course.

**Sarah Boyack:** I will follow up the issue of Scottish assets by clarifying what those assets are and I will pursue the issue of Fort Kinnaird. That moves us into urban Scotland; we have—rightly—been talking a lot about rural Scotland.

I am following up information that we have received from the cabinet secretary about how we define where Fort Kinnaird sits. When we asked about it previously—given that it is in Scotland, we asked why it will not be transferred to whatever becomes the new management structure in Scotland—we were told that, although it is in Scotland, it is not part of the Crown estate, because of all the complex legal ownership issues. We understand that, but the restriction on the transfer, which would prevent Fort Kinnaird from coming to the new entity in Scotland, describes Fort Kinnaird as part of the Crown estate. Does that not defeat the argument, even if the asset is not wholly owned by the Crown Estate? The Crown Estate has an interest in it and the property is in Edinburgh.

Has there been any progress on that? It is quite a big chunk of property that it would make a great deal of sense to have sitting in the property portfolio in Scotland, notwithstanding the fact that it is not wholly owned by the Crown Estate.

**Rob Booth:** I am aware of the reference. To a degree, the semantics are unhelpful in relation to describing an asset as part of the Crown estate and referring to an economic asset in Scotland. From our perspective, on a technical analysis, our interest is directly in the English limited partnership. That ELP owns multiple properties, one of which is in Scotland.

Is our interest in the ELP a part of the Crown estate? Yes—it absolutely is, and it is something that we manage. Are the shareholdings that sit

around that wider structure a part of the Crown estate? They are, because they are involved in the holding structure—I hope that it came through clearly in the fact sheet that we sent to follow up our previous appearance that they are part of the Crown estate.

11:45

The question is whether Fort Kinnaird is an economic asset that is managed by the commissioners in Scotland. On the basis of the structures that are there and the construction of the Smith agreement—according to our reading of it, which we are confident about—we conclude that Fort Kinnaird, which is indisputably a Scottish property, is not an economic asset that is managed by the commissioners in Scotland.

**Sarah Boyack:** I totally accept that the asset is not currently managed by the commissioners in Scotland; we are talking about what will happen next, after the Crown estate is devolved. The site is a huge economic asset, and the people in the area who use the retail park generate that economic asset. I just want to keep the issue on the agenda, convener.

**The Convener:** Certainly.

**Graeme Dey:** As we have discussed, these are uncertain times for everyone who is connected with the Crown Estate, not least the staff. I am conscious that it must be unsettling for some of you guys and your colleagues. I assume that, as we transition to the new arrangements, there will be dialogue in the management of the Crown Estate about what the new body might look like, what roles it might take on, what its operational practices will be and so on. I want to ensure that, as that happens, your staff are given an opportunity to feed into the process of shaping the new arrangements. Is there a mechanism by which they can suggest ways in which things might work better?

**Ronnie Quinn:** That is a valid point. You are right to identify the fact that there is uncertainty among the staff. We are doing what we can to mitigate that uncertainty. For example, we got a letter yesterday from the Scottish Government to advise us about future happenings. That was sent to all staff members this morning so that they could be aware of the issues.

As for staff having an input, we are keen to work with them and the unions on that. As luck would have it, we have another session on Monday at which we will get all the Scottish staff together to go through what is happening and where we are. In fact, Monday's session will contain a bit about business planning and how we shape things.

I hope that we are doing as much as we can to keep the staff engaged and involved. We are aware that this is a difficult time and a time of uncertainty. We are bringing in external consultants to assist with wellbeing, robustness, stress and so on. That is an on-going process. We are conscious of the potential of the changes to impact on the staff.

As Gareth Baird said, the results that we have seen over the past year are a testament to the fact that the staff are doing their day jobs and getting on with things in what we can only describe as uncertain times. At almost every meeting that we have with tenants, developers and stakeholders, there is an element of uncertainty about what will happen next, and our staff deal with that daily. I think that they are as well informed as they can be.

**Gareth Baird:** I would like to add my personal perspective. For me, in a non-executive role, the number 1 element that I have been concerned with in Scotland has been to keep morale and confidence among the staff at the high levels that they have been at, and to maintain delivery levels. It has been a tough time for staff and they have shown remarkable resilience in getting on with the day job.

We had an enormously helpful communiqué from the Scottish Government last night that gave staff more certainty about the future. The consultant who Ronnie Quinn referred to is a first-class human resources operator. She has been instrumental in keeping everything to the forefront for our team. Our head of HR from New Burlington Place has been up regularly, as has our chief executive, who gave a commitment that staff would know everything that came to the fore as soon as she knew it. She has borne that out to the nth degree.

The people in our team are confident that they are getting whatever news is coming forward. As I said, the communiqué that we got last night will really help them. My personal ambition in all this is that we will retain that fantastic resource after the transition, so that we can get the assets working flat out for Scotland on day 2 or even day 1. We are closer to that now, which is a major step forward.

**Claudia Beamish:** I would be interested if anybody on the panel could comment on an issue that I have raised in the past. As things progress, could a social remit be added to your mission statement? I know that it is early days but, even in the four years that I have been on the committee, there seems to have been a sea change in and a strengthening of connections with communities. Has a social remit been discussed?

**Gareth Baird:** I am sure that that will be a matter for ministers' direction under the new structure, whatever it is. As Alan Laidlaw said with regard to engaging with and helping communities and as Ronnie Quinn said with regard to engaging with developers, which are taking colossal risks, that approach is absolutely part of the job. In that engagement and in seeing the initiatives develop is where we get our fulfilment. The more our stakeholders think about that, the better.

**Ronnie Quinn:** The key is that that engagement is not seen as something separate; it is part of the business. As Alan Laidlaw mentioned with regard to the commercial element, if our stakeholders, tenants and customers are moving forward and winning, we are winning, too. There is a synergy; we do not see the issues as separate.

**The Convener:** You talk about building stronger local economies. I am interested in how the procurement process for producing your excellent annual report is handled and whether there is any possibility of reports being printed and published in Scotland.

**Ronnie Quinn:** To be honest, I think that the report is part of the larger procurement programme for publications. I am afraid that I do not know who publishes it.

**The Convener:** We can help a bit with certainty for the staff, because we understand that the report stage of the Scotland Bill will take place on 9 November and that amendments are being tabled this week. That will bring certainty to the first part of the process at least.

It has been useful to have you here to explain in detail what you are doing; I think that it will become a permanent feature of the activity of future committees to monitor, encourage and probe that work. We thank you for your evidence. It certainly shows that our engagement over the past few years has led to fruitful and useful sessions.

The committee's next meeting will be on 2 November. The committee will be in Dumfries for our final evidence-taking session at stage 1 of the Land Reform (Scotland) Bill, and we will host a public engagement event in the afternoon before meeting formally in the evening to hear from the Minister for Environment, Climate Change and Land Reform. Tickets for both events are free, and anyone who wishes to attend can contact the clerks for further details.

As agreed earlier, we will move into private session to consider our work programme.

11:54

*Meeting continued in private until 13:09.*





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

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