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Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 27 January 2016

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

3rd Meeting 2016, 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:

Patrick Harvie (Glasgow) (Green)
Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)
Jamie McGrigor (Highlands and Islands) (Con)
Michael McLeod (Scottish Government)
Aileen McLeod (Minister for Environment, Climate Change and Land Reform)
Neil Ritchie (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 27 January 2016

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015 (SSI 2015/435)

Inshore Fishing (Prohibited Methods of Fishing) (Luce Bay) Order 2015 (SSI 2015/436)

South Arran Marine Conservation Order 2015 (SSI 2015/437)

The Convener (Rob Gibson): Good morning, everybody, and welcome to the third meeting in 2016 of the Rural Affairs, Climate Change and Environment Committee. I remind those present to switch off their mobile phones, or at least turn them to silent, and that members of the committee use tablets. We do not want any interference during the meeting.

Under the first agenda item, the committee will take evidence on three pieces of negative subordinate legislation: the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015; the Inshore Fishing (Prohibited Methods of Fishing) (Luce Bay) Order 2015; and the South Arran Marine Conservation Order 2015. Motions to annul the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015 and the South Arran Marine Conservation Order 2015 have been lodged by Jamie McGrigor, who has joined us. Good morning.

As is the usual practice in such circumstances, we will first have a brief evidence session with the Cabinet Secretary for Rural Affairs, Food and Environment, Richard Lochhead, who has also joined us, so that we can ask questions or seek clarification on issues. We welcome the cabinet secretary, who is with Michael McLeod, head of marine conservation, and David Palmer, head of marine planning, both at the Scottish Government. Good morning. I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Thank you for the introduction, convener, and good morning to the committee and to Jamie McGrigor. I thank the committee for all its hard work over a number of weeks in taking evidence on the marine protected area network, which we are designating and putting management measures in place for.

I do not need to remind the committee that Scotland's seas support a huge diversity of marine life and habitats. There are around 6,500 species of plants and animals and, of course, plenty more that have still to be discovered in Scotland's incredible waters. Our seas account for 61 per cent of the United Kingdom's waters, and they remain at the forefront of many of our key sectors and of our duty to protect our wider environment, with all the benefits that those deliver for Scottish society.

The Marine (Scotland) Act 2010, which the Scottish Parliament passed on 4 February 2010, was a ground-breaking piece of legislation that recognised that our seas needed better management and that we needed to create a range of powers and duties to deliver that. Those included the power to designate marine protected areas to complement existing obligations under the habitats and wild birds directives. The act places a duty on ministers to improve the health of the seas, where appropriate, through our decision making and requires them to act in a way that is best calculated to mitigate climate change.

MPAs have been selected and designated for a broad range of habitats and species that are important elements of our overall marine ecosystem. Ensuring that those habitats and species are properly protected and allowed to flourish is a key aspect of improving the health of our seas overall. Many of those habitats, such as seagrass beds, capture and store significant amounts of carbon, which makes them a key element, but not the only element, in mitigating climate change.

"Scotland's Marine Atlas: Information for The National Marine Plan", which was published in 2011, highlighted two key things that are worth mentioning: first, that in some cases, high-impact fishing can be a significant and widespread pressure on Scotland's marine environment; and, secondly, that many of our species and habitats are in a state of decline. Parliament therefore agreed that the status quo was not an option, and the committee supported that.

Our marine protected areas need to be managed in a way that improves the health of our seas and ensures that they continue to contribute to our many economic sectors at the same time. Of course, we also need to improve the status of those habitats and species. That requires the removal—in some cases—or the reduction of fishing pressures, particularly from the higher-impact methods that I mentioned.

I have been lobbied very hard by many sectors of Scottish society about the MPAs that have been capturing headlines and those that we are discussing today in response to the motions to annul from Jamie McGrigor. Some sectors feel that we are not going nearly far enough with the MPAs that we are designating—or, more important, with the management measures that we are putting in place for those MPAs, including the ones that we are discussing today—and that includes some fishing sectors. Meanwhile other sectors, including in some cases the mobile fishing sector, argue that we are going too far with our management measures.

Given the considerations that we must take into account, what we have here is a proportionate and pragmatic response to fulfilling our responsibilities. On that note, therefore, I put it to committee members that they should support the orders that are the subject of this discussion.

The Convener: Thank you. Do members of the committee have any questions for the cabinet secretary before I bring in Jamie McGrigor?

Sarah Boyack (Lothian) (Lab): This might not be a question directly for the cabinet secretary; it might be for his officials. I would like to delve into the information on the economic impact that we have before us. There seems to be a wide gulf between the representations that we have had from some of the fishing interests and what is in the papers that the cabinet secretary and his officials have put to us, which give quite detailed assessments of the impact on employment. I would like to hear their comments on the detail of the research that the Scottish Government has carried out into the employment impact.

Richard Lochhead: I will answer initially, but my colleagues may want to come in with more of the detail.

With such designations and legislation, we always have to carry out economic appraisals and assessments of what we are putting forward to Parliament. Those have been available publicly for some time now, both for individual MPAs and for the overall network.

It is worth highlighting that in Scotland there are 160 of the over-15m vessels that will be affected by the MPA network. According to the information that I have been given, 690 men are employed across those vessels, but 71 of the 160 vessels will not be affected by more than £1,000, according to our calculations. Those statistics are based on the assumption that the fleets affected will not take any mitigating action. As the committee may be aware, we have argued all along that the fleets will be able to adapt, given the very modest impact that the MPAs will have on their fishing activities. The detail of the economic appraisals for the south Arran MPA shows that 9.9 jobs may be affected, again on the basis that no mitigating measures are undertaken by the fleet concerned.

I have been the fishing minister for nearly nine years. Over those nine years I have seen many different policies adopted by the European Union and, indeed, domestically that have led to the fishing fleets having to adapt, as they always do, to changes to designations and fishing patterns—adaptations as a result of changes in stocks or of legislation from Europe or elsewhere. I hope that there will be minimal, if any, economic impact from these measures. Across the whole MPA network, 214 under-15m vessels with 510 crew members will be affected. Of those 214 vessels, 119 will be affected by less than £1,000.

The big picture for the south Arran MPA that has been mentioned is that the impact will be shared by 137 vessels, which currently gross £19.2 million between them. Therefore, the effect on their income will be 2.4 per cent. Again, our expectation is that the vessels will be able to mitigate that impact by fishing elsewhere. For instance, at the fishing negotiations that the Government successfully conducted a few weeks ago, there was an increase in the prawn quota for the west of Scotland. Various factors will affect what actually happens in the real world at sea for the fishing fleet, and those must be fed in to assess the economic impact.

I have been as conscious of the economic impact as I have been of the conservation impact. We have had three rounds of consultation on the MPAs, and we have listened carefully to the representations made by fishing communities. The third round of consultation is still to be discussed, perhaps by this committee, but today we are discussing the other consultation rounds. All along, I have gone to great lengths to listen to the representations that the affected fishermen have made.

Those on the other side of the argument about the economic impact—in the fishing industry, such as static gear men and divers, and in other sectors that have expressed an interest in the future of MPAs—argue that protecting our marine environment through MPAs will have a massive economic benefit. I know that the committee has had representations from environmental organisations and others who make the case about MPAs' economic benefits for Scotland.

There are two ways of looking at the issue: there is the direct impact on those in local fishing communities who feel that they will be affected, and I have given you our statistics on that; and there are the economic benefits that Scotland will enjoy as a result of MPAs being put in place.

Sarah Boyack: It is helpful to get that on the record. You talked about mitigating the impact and about making adaptations. Will there be support from the Scottish Government to assist industries—some of which are locally based and others of which are more widely spread—to make the changes that you referred to?

Richard Lochhead: That is another good question. A few weeks ago, we announced a three-point plan to address some of the concerns that stakeholders have expressed. Some of the mitigating measures that I mentioned address in particular the concerns that were expressed by mobile fishing sectors.

We have said that, shortly, we will allocate funds through the European maritime and fisheries fund, which is now available. It comprises more than €100 million for Scotland for diversification and adaptation. Vessels will be able to apply to the fund if adaptations for new fishing methods generate any expense.

We have also said that we will carry out environmental monitoring. As part of that, I have allocated £500,000 over three years to look at MPAs' effectiveness over time. Vessels that can put forward a case for being most affected by MPAs can apply to that £500,000 fund to undertake environmental monitoring for us, to help to offset any potential economic impact on them.

The third point of the three-point plan is economic monitoring. We will work with public agencies, our own people and the affected industries to put in place economic monitoring over the coming months and years, to ensure that we understand fully the MPAs' economic impact.

Such issues are always controversial. When I was fishing spokesperson for the Opposition in 2005, I recall that the fishing industry said that some measures would be devastating for it and of course, as an Opposition MSP in the Parliament, I expressed the industry's concerns. Now the industry tells me that those measures and the economic benefits that they deliver to the sector are some of the best things that have happened to it. Sometimes in the heat of the debate it is difficult to understand exactly what the economic benefit will be.

Michael Russell (Argyll and Bute) (SNP): Thank you for putting on the record the economic information, which is vitally important. I will press you a little, however, on adaptation.

People will have to adapt to a greater or lesser degree—your evidence indicates that some will have to adapt to a greater degree. That will put pressure on existing fishing grounds and fishing operations that are undertaken by other people. What work has been done on the economic effect of that conflict and on the effect of gear conflict and other conflict between the people who already fish in those other areas? There is considerable fear that those effects will result in more difficulty. As an MSP who is directly affected, I already see evidence of that conflict.

09:15

Richard Lochhead: I can give you some answers on the overall picture. I am not sure whether you are speaking specifically about the south Arran MPA or about it and the others that we are discussing today. I will try to give you the general picture, and if there are questions on specific MPAs I can come back to them.

The question is a good one and a number of factors have to be taken into account in analysing what the impact will be. First, there is the fact that we are still allowing fishing in the Firth of Clyde, where the measures will affect only 4 per cent of trawl grounds and 19 per cent of scallop grounds, the quid pro quo being that 96 per cent of trawl grounds and 81 per cent of scallop grounds are still available to the fleets. Overall, an estimated 98 per cent of inshore trawl and dredge grounds will still be available.

Other factors have to be taken into account. I am not saying that this is the whole answer, but I gave one example of the prawn quotas going up, which clearly shows that prawn stocks are healthy and so are an option that is available to the fleet. In most cases, it still has the vast majority of the grounds to fish in and it can certainly fish for those stocks because they are in more abundance overall. There will be specific circumstances in certain parts of the sea that have different stock levels, but overall the vessels are mobile and are able to adapt their fishing patterns—that happens as a matter of course in the fishing industry. I know that smaller vessels can travel only shorter distances and that there are more safety issues to take into account, but most of the measures in the approach that we are taking are very modest and all vessels should be able to adapt.

Michael Russell: Could I follow up with a slightly different issue? You have made some small changes to the other MPAs, but in the final consultation you have made no changes to the south Arran MPA. What is the reason for that?

Richard Lochhead: It is important to say—especially in light of some of the commentary that I have seen in the media and elsewhere—that 64 per cent of the south Arran MPA is available for trawling, and that of the burrowed mud, which is most important to the trawl sector, 60 per cent is available to the prawn trawlers. That is not closing south Arran to fishing, and of course that is just one part of the mobile sector. I have read comments saying that we are closing south Arran

to fishing, but that is not the case. We are trying our best to take a pragmatic approach that balances conservation needs with the economic needs of the local fishing fleet. However, it is worth noting in relation to south Arran's role in wider fisheries conservation that the wider Clyde ecosystem has been impacted by fishing down the decades and that, as we speak, it is one of the most frequently trawled areas in the whole of Europe.

I have a map here, which I suspect members cannot see in detail from where they are sitting but which they may have seen in earlier papers. It shows the intensity of fishing across Europe. The deeper the red areas, the more intensely trawled those areas are. If you look at south Arran, you will see that it is one of the darkest red areas in the whole of Europe, so we have to take into account that the Clyde is under some pressure. The prawn stocks are sustainable, so I am not saying that fishing activity is not justified in those areas, but I am saying that, with the MPA and the measures that we have put in place, we felt that we had already got the balance right.

Michael Russell: Can copies of that map, in colour, be distributed to members of the committee? At the moment, it is like getting that information via radio rather than television, and it would be interesting to see it.

Richard Lochhead: Yes, we can do that.

Claudia Beamish (South Scotland) (Lab): I found the cabinet secretary's comments helpful because I wanted to ask questions about the south Arran designation and because I also had some more general questions, a lot of which have now been answered in response to other members, so I will not go into them again, as they are on the record.

Concerns have been expressed to me about the fact that there was not a further consultation on south Arran, although there have been some small changes to the three other designations that are before us today as a result of further consultation. Will you explain why the decision was made not to consult further, in order to reassure those who have concerns?

Richard Lochhead: Clearly, there are sensitive issues with regard to all the MPAs, and all MPAs have environmentally sensitive areas, which is why they were designated as MPAs in the first place. With regard to south Arran, we took the view that we must recover the maerl beds, which are important for all kinds of environmental reasons. As you know, some of the MPAs are about safeguarding and some are about recovery of certain environmental features. There are other features within the south Arran MPA as well: the Lamlash bay no-take zone is already there and we want to protect that. Indeed, given some of the sensitive features in the south Arran MPA, there are some minor restrictions on the creel fishing sector, so it is not just about the mobile fishing sector that is largely being discussed as part of the debate.

I repeat the statistic that I gave to Michael Russell on the burrowed mud, which is of most importance to the prawn fleet—60 per cent of that will be available, so we thought that we had the balance right.

Claudia Beamish: Further to that, I seek clarification of which of the options was adopted for the south Arran MPA. It is unclear to me which of the options was the preferred option of Marine Scotland. Was the preferred option that there should be no trawling, as has been highlighted to me? You seem to be saying that that is not the case.

Richard Lochhead: I will ask colleagues to remind me of Marine Scotland's position 18 months ago but—

Claudia Beamish: There is some confusion in people's minds. It would be helpful to have this on the record.

Richard Lochhead: I will respond on where we are now and then Michael McLeod can comment on where we were originally. In the initial consultation, we put forward some proposals. We had more than 5,000 responses to those proposals over a year ago and we had to reflect on what people said to us. Yes, people wanted the proposals to be proportionate. They also wanted them to be simpler, although I know that they are not as simple as perhaps they could be in some areas. The simpler the proposals are, the easier they are to manage and to understand, so that people can obey the law and everyone understands what is restricted, what is not restricted and where those restrictions are.

We announced our final proposals after the consultation. There were changes between the initial proposal for south Arran and our final proposal for south Arran because we had a consultation, just like we had consultations for all the MPAs. I took on board the fishing industry's representations, as I did in relation to a number of other MPAs. However, I do not have a uniform approach for every single MPA, as we have to look at individual features within each MPA, what is best for the environment and the individual issues that the fishing industry raises in relation to those parts of our seas.

Michael can comment on the initial proposals.

Michael McLeod (Scottish Government): The original consultation ran from November 2014 to February 2015 and included three approaches for

south Arran. The preferred approach was the third one, which was at that point the most stringent approach. There was pretty much no support from any stakeholder for any of the three approaches that we consulted on, which led us to go back to the drawing board, trying to make the approach as simple and as straightforward as possible.

Another key factor in the consultation was that a lot of stakeholders said that we were not going to recover anything with the measures that we had proposed. That made us think about exactly what we were trying to achieve with that MPA, which was about recovering the maerl beds in particular. That led us to the revised proposal, which is the one that is before you today. That was consulted on over the summer, between June and August 2015, so everyone got a chance to provide their views on that proposal.

In response to that consultation, our stakeholders remained very much split—as are the two groups that are gathered outside the Parliament this morning, with some who still do not think that we are doing enough and others who think that we are going slightly too far. We are probably somewhere in between.

Claudia Beamish: I have two further questions, one of which follows on from that. Will the cabinet secretary or his officials give us some details of how the local consultations were organised and advertised? That is important because I have had some correspondence, not from my own constituents but because I am a member of the committee, saying that local people were not listened to. I have been sent a lot of evidence from the other side, too, so it would be helpful to have on record how the consultations were arranged and organised.

Michael McLeod: In the process of developing the management measures, the first step that we took, back in the autumn of 2014, was to have a series of management forums. Representatives of community groups, environmental non-governmental organisations, the fishing industry and recreational interests all came along to participate and to consider the various approaches that were probably going to be in the first public consultation.

During the consultation, we had a series of events at strategic locations in relation to the MPAs, which were advertised in the local press, on radio where possible and in *Fishing News*. The events ran from the middle of the afternoon until 9 o'clock at night, to try to ensure that anyone with an interest had the opportunity to come along and make their views known. Notes from those meetings were published in our consultation report, which set out a broad spectrum of opinion and views from people around the coast.

Claudia Beamish: Cabinet secretary, you have highlighted the socioeconomic concerns, which have been expressed to me and other members. In view of the fact that we are talking about fragile coastal communities all the way down the west coast, can you say more about what local socioeconomic monitoring there will be if the orders go ahead today?

I understand that if the orders do go ahead, there must be a review in six years' time. In view of the concerns that have been expressed, would you consider the possibility of an earlier review?

Richard Lochhead: The review is scheduled for 2018, which will be six years after the proposals were made in the context of the Marine (Scotland) Act 2010.

We have the ability to review the position before then, should we wish to do so. I am happy to say to the committee and all sectors, first, that we will work with them on economic monitoring—we will work with local councils and others who have an interest in the local economic impact; and, secondly, that we reserve the option of returning to Parliament at any time before the official review in 2018 to amend the orders should something arise on either side. If there is a greater economic impact than we expected, we can intervene and review any of the orders, and if there is more environmental damage than we expected, we can strengthen an MPA.

I am happy to put that on record as an option; we reserve the right to come back to the Parliament if anything arises that we think needs to be addressed.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I support the principle of MPAs. We have to conserve our environment and I am 100 per cent behind that, however, I have witnessed the decline in fishing over the past 50 years. When I was a boy, the harbour of my home town of Lossiemouth was jam-packed with fishing boats; now it is jam-packed with yachts. There is a totally different economy that is a lot less lucrative, given that in the past many butchers, bakers and all the rest of it made their livings from supplying the fishing boats. I take your point, cabinet secretary, that there appear to be minimum effects, in that fishing boats and fishermen do adapt, but the expression "death by a thousand cuts" springs to mind. Lots of little things—I mentioned the 50 years of decline in fishing in Lossie—can over time have a serious impact and effect.

09:30

I was interested in your answer to Claudia Beamish about the reviews. I urge you to come back with reviews later this year. Marine Scotland,

Scottish Natural Heritage, the Government and others need to keep a close eye on how things develop. There are conflicting views. The science is not particularly good about many areas on the west coast. There is the example of Broad Bay in Lewis, which has been closed to fishing for 30 years—there are only starfish there now, and there are various reasons why that could have happened. Perhaps the bay had been denuded to such an extent before it was closed that it could not recover. Because it is a bay, it is enclosed, so it is quite different from the situation at south Arran on the open Clyde.

What I am saying is that at the moment we do not know the impacts or effects of many things. I welcome the environmental monitoring, but I urge you to consider the matter very closely over the next six to nine months—over this year—and to come back to us fairly early with your initial conclusions both about those matters and about economic monitoring. Can you assure us that you will do that?

Richard Lochhead: I am happy to tell the committee, in response to Mr Thompson’s point, that we can perhaps bring back a progress report before the end of 2016 in order to inform the committee about how the implementation of the management measures for the MPAs is progressing. Although I cannot promise a full review, we will make some resource available in order to produce a progress report, and we will pass that to the committee before the end of 2016 if that would be helpful, but with the proviso that Parliament passes the MPAs and the measures are put in place. Otherwise, there will be nothing to report on.

On the very serious point about the decline of fishing communities in Scotland, I will perhaps break the rules and speak as the MSP for Moray for two seconds, as I am familiar with Lossiemouth, which Dave Thompson mentioned, as well as with many other fishing communities in Scotland, as cabinet secretary. If you speak to any wise, elderly, long-in-the-tooth gentleman at Lossiemouth harbour, he will tell you that the decline of fishing in Lossie and many other communities has been down to a range of factors. First, there has been poor fisheries management over many decades. Secondly, a vessel today can catch several score times the catch of vessels pre-war. I am not suggesting that Dave Thompson was around Lossiemouth pre-war—I am simply mentioning that technology plays a big role in vessels’ capacity to catch; there are fewer vessels but they catch even more fish.

The decline of fishing in some communities has been largely down to not getting the management right in the past—it is not just because of other factors. Thankfully, fish stocks are now recovering in Scottish waters, in large part thanks to conservation measures that have been adopted by our fishing fleets. I commend them for that, having worked closely with them to put those measures in place over many years.

I must make this fundamental point: there are spillover opportunities and benefits for fish stocks from MPAs. The scientists will tell you that protecting maerl beds and other marine features will help spawning scallop stocks, spawning cod stocks and so on. As well as providing those benefits for fishing, MPAs are there to protect marine features. They are not fish-stock regulations—they involve protecting the species and habitats on our sea bed, which we have learned a lot more about in recent decades through advances in science and knowledge.

Dave Thompson: The science is very important in respect of the spillover effects and the other factors that you mention. That is why we really must put in a lot of effort on the west coast. I think that a lot more has been done on the east coast than the west.

There is also the crucial issue of critical mass in small communities such as Mallaig, on which I will go into more detail when the small isles MPA management proposals are brought forward. If one or two boats out of 15 drop out for whatever reason, that means that the slip, the ice factory and the transport are not viable, and the whole fishing infrastructure is destroyed. That issue must be examined carefully, especially with regard to the many fragile communities further up the west coast that are quite remote from the central belt. Problems have already arisen in Lochaber, as Marine Harvest has announced that jobs will go across the north, and the Rio Tinto Alcan smelter is undertaking a review that could affect 150 jobs directly, and many others indirectly. That might not seem like an awful lot of jobs to people sitting in Edinburgh or Glasgow, but it is a massive number, and we do not want to add to the problem by jeopardising ports such as Mallaig.

Richard Lochhead: We are extremely conscious of the social and economic impact of MPAs and of any other measures that we put in place at Government level, but we also look at the economic benefits of those things.

You mentioned the history of decline in some communities. We have to do some things differently to stem that decline and regenerate those areas. The future of the Clyde, including its fisheries and marine management and the other economic sectors, is hotly debated just now. I do not pretend to have all the answers, but we know that there is reduced diversity in the fish stocks in the Clyde. We have a good prawn fishery, but once upon a time we had good white-fish fisheries

too. The white-fish stocks have not been in great health—to say the least—for the past few years.

We are still looking at the answers and trying to regenerate. We are speaking to our scientists and fishermen, and to other economic sectors, to understand how we can build a healthy ecosystem with healthy fish stocks and healthy economic marine sectors in the Clyde for the future.

The decline to which Dave Thompson referred is something that we must try to prevent, stop and reverse, which means that we must do some things differently.

The Convener: I do not want to curtail questions, but I ask everyone to keep them as short and to the point as possible. Jim Hume will go next, followed by Jamie McGrigor.

Jim Hume (South Scotland) (LD): Good morning, cabinet secretary. I will try to keep my question as short as possible. I am interested to know why the MPAs that we have now are quite different from those that were originally proposed and consulted on fully. Even the SNH recommendations—especially the recommendation on south Arran—were quite different from what we have now.

We have talked a little about the science, and you have said that, during the consultation process, you thought about changing the proposals. You mentioned that south Arran is a heavily fished area, but there are important maerl beds there, despite the heavy fishing. Where did the evidence—scientific or otherwise—come from at such a late stage to suggest changing the original proposals for the MPAs?

Richard Lochhead: We are speaking about management measures that are informed by the science. We have to decide how to manage MPAs effectively through balancing interests—as we have discussed previously. We must strike a balance between the conservation benefits and the aim of the 2010 act, and the social and economic impacts. The science is just the same now as it was at the beginning of the consultation process. The scientific advice from SNH and others said that addressing high-impact activity is the way to help the marine environment to recover. The Government must decide, while working with all the stakeholders and our consultation responses, what the best management measures are to make that happen.

There is also a wealth of scientific evidence on the benefits of protecting marine features that clearly informs our management decisions. We are aware of—the committee knows about this, too, from evidence that it has taken previously—the carbon capture and storage that is known as "blue carbon" and its relationship to the role that marine features play in tackling climate change. We know about the benefits for shellfish and other species of having in place marine protection measures. There is the importance of sediments and the importance of water quality to the wider environment. I could go on and on about the environmental benefits of marine features. That scientific information is out there and it informs all the management decisions that we take.

Regarding south Arran, I can only reiterate what I said to Michael Russell earlier. Large areas are available for fishing activity to continue in south Arran. We did not see any need to revisit that issue, which is why there was no further consultation on it. If we keep consulting over and over again on MPAs, they will become watered down and will become just paper MPAs as opposed to making a meaningful difference to protection of our marine environment. We will run out of parliamentary time as well, so we will not have an MPA network. I think that three rounds of consultation on the other MPAs is more than adequate, and the rounds of consultation that we have had for south Arran and the MPAs that we are discussing today were also more than adequate.

Jamie McGrigor (Highlands and Islands) (Con): My first question is a very basic one. Regarding the south Arran MPA, it appears that no copy of the final draft was served on the interested parties, although I think that that is required in law under section 87 of the Marine (Scotland) Act 2010, which was passed by this Parliament. Why was no copy of the final draft served on the interested parties?

Richard Lochhead: I am unaware of that. As far as I am concerned, we have done everything that we should have done. The real complaint that we have had from some sectors is that there has not been enough time for the third round of consultation responses for some of the MPAs. I will ask about the final draft on the south Arran MPA.

Michael McLeod: Section 87 requires us to publish a draft of the order and to make it available to all interested parties, which is what we did on 11 June, when we published our response to the original consultation.

Jamie McGrigor: According to a great many fishermen who are standing outside the door, they never received anything. Is that not actually against the law? I am sorry—I am not accusing anyone of breaking the law—but it appears that it could be against the law.

Michael McLeod: The response to the consultation and the draft orders were made available to those who responded to the consultation. In the case of Clyde fishermen, the Clyde Fishermen's Association had made the

response, so they were made available to the association. There were also emails sent out to the various sea fisheries groups, so the fisheries monitoring and conservation groups for inshore and offshore waters also received notification that a draft order had been published.

Jamie McGrigor: I take that point, but I would have thought that individual fishermen and fishing boats were interested parties, since they are the people who are going to have to stop fishing in some of the areas. Do you agree that there is something a bit wrong if they did not get the draft?

Richard Lochhead: We cannot answer that question. I know that the fishermen whom you spoke to are outside Parliament this morning. There has been plenty of commentary from the—

Jamie McGrigor: I did not speak to them this morning. This has been—

Richard Lochhead: I am sorry. I thought that you said that you had spoken to the fishermen outside.

We have had plenty of commentary from the Clyde Fishermen's Association. I do not think that there is any indication that it is not aware of what is happening. I know that you are honorary president of the Clyde Fishermen's Association, so I am sure that you are aware that they know all about—

Jamie McGrigor: I am going to make a declaration about that a bit later on, cabinet secretary.

My second question—

The Convener: It would have been better to make that declaration before you started talking about the subject and asking questions.

Jamie McGrigor: If you want me to do that, I will, but I was originally told that I was questioning only as an MSP. I was to declare my interests when I came to move my motions. May I leave it like that?

The Convener: We recognise your interest and you can declare—

Jamie McGrigor: I will say it then. I declare an interest in that I am honorary president of the Clyde Fishermen's Association—not vice-president, as some people who have been talking on the website have said. I think that I have been promoted.

09:45

Moving on to my second question, I note that with regard to the south Arran MPA there were two maps—one relating to scallop fishing and the other to prawn fishing—that were discussed at the workshops with the Scottish Government last year. The fishermen and the CFA thought that they had got agreement on the maps, and they appeared to meet all the requirements for protecting the marine features that the cabinet secretary has talked about. Why, then, was a final map produced—I have it with me—that went way beyond what was suggested in the initial consultations?

Richard Lochhead: As I have said to the committee, we had an initial consultation—Michael McLeod has laid out the options that were available for south Arran. Because there was not much support from stakeholders for any of the options, we listened to the 5,000 responses to the consultation that we received and which I have already mentioned. As the proposals changed, new maps were produced. Over the past year or year and a half of the consultations, we have clearly been listening to people and adapting the proposals accordingly. Indeed, we have had three rounds of consultation for some of the MPAs to ensure that we are doing our best to take on the genuine concerns that sectors have expressed. However, changes have been made.

Jamie McGrigor: All I can say is that the final map seems to shut out scallop fishing almost altogether from the south end of Arran and leaves only a bit of burrowed mud for the prawn trawlers. On the initial maps, which were the ones that were actually consulted on, there was room left for people to continue their livelihoods. That is what the whole argument about the south Arran MPA is about.

I am sorry, convener, but I have a number of other questions.

The Convener: First, does the cabinet secretary wish to respond to the question that Jamie McGrigor has just asked?

Richard Lochhead: With regard to livelihoods being at risk, I reiterate that the analysis of the measures that we are putting in place in south Arran show that the effect on the income of the vessels concerned is 2.4 per cent. The 137 vessels that fish in the area gross £19.2 million. I accept that for some vessels the percentage of their income will be much higher than 2.4 per cent; indeed, the figure could be 10 per cent or, in some cases, up to 20 per cent. That is why we have made available to the prawn fleets in the trawling sector substantial fishing grounds in the south Arran MPA.

Jamie McGrigor: The latest SNH document on the south Arran MPA makes it clear that the featured burrowed mud, of which a lot has been made, does not require restoration or recovery, but the Government document states:

> "The aim is to recover the maerl beds and conserve"—

"conserve" is a very important word—the protected features of the MPA. It therefore goes without saying that stopping fishing to protect those features is not per se justified, according to SNH's advice. Can the minister explain why he disagrees with SNH's evidence?

Richard Lochhead: Michael McLeod wishes to come back on that.

Michael McLeod: It is probably more appropriate if I seek to explain this, because I can give a bit more detail.

SNH advised that we should remove or avoid mobile gear pressure on maerl beds, the maerl gravel habitat and sea-grass beds, and the advice about burrowed mud was to reduce or limit the amount of pressure being exerted. We have made absolutely sure that we have removed the mobile gear pressure from the most sensitive habitats—in other words, the "remove" or "avoid" habitats—and for burrowed mud we have gone for a combination of spatial elements with 38 per cent of burrowed mud closed to trawling and a limitation of 120 gross tonnes on the size of vessels. As the cabinet secretary has said, the Firth of Clyde around Arran is one of the most heavily fished areas in the whole of Europe, so—

Jamie McGrigor: That is because it is very good for scallops.

Michael McLeod: No—we are talking about trawling. We will not conserve that habitat if the whole area continues to be fished with that degree of pressure. The habitat would probably continue to decline, which would mean that we were not conserving. We therefore have to take pragmatic measures to ensure that we are furthering that conservation objective.

Jamie McGrigor: But would you agree that there is a difference between conservation and restoration? It is quite obvious to me that there is a difference between them and that the measures that are needed for conservation and those that are needed for restoration are two different things.

Michael McLeod: That depends on the sensitivity of the habitat or species that we are trying to protect.

Jamie McGrigor: Is it to do with species, not the habitat?

Michael McLeod: It concerns a habitat, with species and biotopes that live upon it or in it.

Jamie McGrigor: Right. Can I continue, convener?

The Convener: Yes, bearing in mind that we will have debates on the motions.

Jamie McGrigor: I am aware of that. I am sorry—

The Convener: No, no, go on.

Jamie McGrigor: The measures now suggested for the south Arran MPA will shift effort to other areas of the Clyde for both scallop dredging and prawn trawling. In point of fact, I am told that that could wipe out all scallop dredging within two or three years because if the effort is shifted to other areas, those areas may well be denuded and the vessels will just disappear. As I said, the measures will severely restrict prawn trawling as well. I do not wish to be too subjective, cabinet secretary, but have you quantified the effect that the measures will have on jobs and income in towns such as Tarbert and Campbeltown and those on the Ayrshire coast?

Richard Lochhead: I gave some figures earlier. However, on the overall economic impact, we are talking about scallop vessels in the main, which are clearly very mobile and which fish for tens of millions of pounds-worth of scallops. Therefore, I cannot see the very modest impact of the south Arran MPA on the income of scallop dredgers wiping out the industry as you suggested.

I know that this issue is controversial and that debates about it are difficult because we are trying to balance conservation with economic impact, but we have to have a sense of realism about the statistics and the phrases that we use. There is no danger of the scallop sector being wiped out by the south Arran MPA. However, I am very conscious of the economic impact, which is why I have said that we will monitor it carefully. Economic monitoring is one of the points in the three-point plan that I mentioned.

We will use part of the £500,000 available for environmental monitoring to deploy the vessels affected to undertake some environmental monitoring, if they so wish, in order to offset some of the economic impact, if indeed that materialises. We are very sensitive to that issue, but we believe that the overall economic impact will be very modest.

Jamie McGrigor: You are quite rightly very proud of Scottish Food and Drink. In the past few years practically every fish restaurant that has sprung up around the west coast of Scotland in particular, and in other places, has scallops on the menu. As we know, scallops do not go into creels; they have to be dredged or dived for. I am told that the diving sector produces only 1 per cent of the scallops that are harvested. If we did not have the dredging sector, would scallops simply be imported from other countries and would Scottish restaurants not be able to use Scottish scallops any more?

Richard Lochhead: I love Scottish scallops. If I am lucky enough to see them on a menu, I take advantage of that because they are fantastic. I

work with the sector all the time to promote Scottish seafood and scallops.

An estimated 98 per cent of our inshore trawl and dredge grounds in Scotland will still be available. On economic value, in an industry that is worth tens of millions of pounds, only 2.4 per cent of the income of the vessels that fish from south Arran will be affected.

The measures that we are discussing are proportionate. I highlight again that there is scientific evidence that MPAs can help scallop stocks and ensure that there are scallops in those areas in the future. Hopefully, these protective measures will have benefits for stock regeneration in some parts of Scotland.

The Convener: Do you have many more questions, Mr McGrigor?

Jamie McGrigor: I have a couple—well, one, anyway.

The Convener: One more—very good. We will have the debate too, of course.

Jamie McGrigor: Thank you very much. As part of the MPA process, 20 areas were formally designated in mid-2015. Sixteen of the accompanying management measures that the Government ministers decided on were as expected. However, four measures in the west of Scotland were more severe than what would be required to meet the conservation objectives and they were not consulted on in the series of workshops that were held in the final 18-month period.

Although there was some consultation on three of the measures, no further discussion or consultation was granted on the south Arran MPA—which, after all, was suggested as an area for designation by a third party and was not originally proposed by Marine Scotland—before today's consideration by this committee. How did that come about?

Given that zonal management measures for the south Arran MPA were recommended by SNH—as I have said previously—and were accepted by all during the process, why did they become so much more draconian than they were when they were presented in the workshops when the consultation took place? That is the core of the issue.

Richard Lochhead: It is clear that you have a certain view of the role of MPAs—you use words such as "severe" and "draconian"—but many sectors in Scotland say that the changes are beneficial and that we have not gone far enough in making more changes to the MPAs to bring more benefits.

I believe that we have struck the right balance. There are three MPAs on which strong representations were made—in addition to south Arran, where people made strong representations; I am not saying that they did not. We took a decision to listen to a number of the communities and make some changes. We judged each case on its merits across the proposed MPAs on which the communities made representations to us. We will potentially have a further opportunity in the next few weeks to consider the three MPAs to which further changes are being made.

The Convener: Thank you, cabinet secretary.

We move to item 2, which is consideration of motion S4M-15336, which asks the committee to annul the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015 (SSI 2015/435). There is an opportunity to debate the motion just now. Given that we have had a good evidence session, I hope that the debate will not need to last for the 90 minutes that is procedurally possible. Officials cannot take part in the formal debate, so only the cabinet secretary will debate the motion. I invite Jamie McGrigor to speak to and move the motion.

Jamie McGrigor: Before I move the motion, I declare an interest, as I have already done, as the honorary president of the Clyde Fishermen's Association. The main job for me in the association is not to take part in any policy decisions that are made—indeed, I have never actually been to one of its proper meetings—but to turn up at the annual lunch, which I have been doing for 15 years.

I have to say that at the annual lunch I have heard politicians from pretty much every party in this Parliament extolling the virtues of artisanal fishing for nephrops and scallops, which underpins many jobs, many livelihoods and many families in Tarbert, Campbeltown and the Ayrshire coast. I have heard politicians from all parties singing the praises of the Clyde fishermen and extolling their virtues. It is important that, in their hour of need, those fishermen get the same support from politicians that they get at the annual lunch.

10:00

MPAs must have specific objectives that are supported by the best available evidence. It is self-evident that they should meet their conservation objectives and, where possible, contribute to the maintenance of existing sustainable activity—in this context, fishing.

There is an issue to do with the Scottish Government's introduction of a tranche of MPAs for the protection of specific features. A logical process, which was agreed by all stakeholders, including the Scottish Fishermen's Federation,

was run by Marine Scotland over four years. The features to be protected were agreed, locations were selected and a series of workshops were held over the final 18-month period, which verified the process and examined in detail the potential management measures that would meet the policy's aims and objectives.

Scottish Natural Heritage, the statutory nature adviser, participated throughout and made recommendations on optimum measures to meet the conservation objectives. I talked about that earlier in the meeting.

The process was meant to be an exemplar of how to plan a network of MPAs, which would demonstrate Scottish leadership to other areas. I think that the network is actually a UK network, not a Scottish one. In mid-2015, 20 areas were formally designated. However, when ministers announced the accompanying management measures on which they had decided, the approach was as expected in 16 areas, but for four areas in the west of Scotland there were departures into measures that were more severe than would be required to meet the conservation objectives.

The problem with that is the potential damage to the sustainable fishing activities that the MPAs are meant to maintain. The central point is that the extra measures are not required to meet the conservation objectives. I am talking about conservation, not restoration—they are two different things. The Scottish Government underplayed the damage to established sustainable fishing that would result; it used broad figures that indicated little damage to fishing overall in percentage terms. Although that is correct, the localised impact on the delicate communities about which Dave Thompson talked is enormous. That point was made to the cabinet secretary, and an additional economic assessment was rapidly provided at the correct level of detail to illuminate the practical effects of what was proposed.

I emphasise that the measures in 16 of the 20 proposed areas were accepted by the Scottish Fishermen's Federation—I am talking about not the CFA but the SFF. The Scottish Government reacted to protests about three of the four disputed MPAs by embarking on further consultation—the cabinet secretary's decisions are awaited. For one area, the south Arran MPA, there has been no further discussion or consultation, and the unmodified execution of the statutory instrument in that regard—the South Arran Marine Conservation Order 2015—is being considered by this committee today. In effect, this is the consultation on that proposal.

For all the MPAs, management measures are zonal. That is a logical approach; where features exist they are delineated and suitable protection measures are applied. Existing sustainable activity within the MPA is permitted on a zonal basis, where that is possible without compromising the conservation objectives.

If members will bear with me for a moment, I will talk about some of the areas. I am not talking about south Arran; I am talking about Loch Sween, Loch Goil and Loch Fyne. It will be noted that all forms of mobile fishing are prohibited in Loch Sween. A much restricted fishery is permitted at the mouth of Loch Sween, which is the hatched area on the map that I am looking at. In the two approaches to management that Marine Scotland proposed, the maerl beds at the head of the loch and at the side of Linne Mhuirich were to be fully protected. That position was supported by the Clyde Fishermen's Association. There are no maerl beds in the centre of the loch, although it contains a small area of burrowed mud that harbours the mud volcano worm, which is a terrifying sounding thing, although I am told that it is not. That feature might be of interest, but it does not meet the criteria for protection in OSPAR—the Convention for the Protection of the Marine Environment of the North-East Atlantic—region III, which is the European Atlantic coast, given that other substantial areas of burrowed mud have been offered protection.

More importantly, the area was in fact opened up to being a multi-species environment from being a completely dead acidic environment by the operation of small trawlers; it was actually improved by the trawling. The acidity was introduced by the downwash of sitka spruce needles from the surrounding forestry plantations. The Nature Conservancy Council, SNH's predecessor, did not argue against that case when it attempted to have Loch Sween closed to mobile fishing.

The Clyde Fishermen's Association is prepared to compromise in order to safeguard the very small but important artisanal summer fishery in the loch. Neither Marine Scotland nor SNH suggests that the burrowed mud feature requires mobile fishing to be prohibited. The compromise that is offered is that a summer fishery, with dates to be agreed by Marine Scotland, would be allowed, with the same class of vessel that is permitted to fish at the mouth of the loch, which I believe is anything under 75 tonnes. In management terms, given that there is no restriction on the size of vessel that can fish in the loch, that compromise represents a more than satisfactory reduction in effort.

I am trying to go through the points on the different lochs. On Loch Fyne, for many years, to meet conservation requests from third parties, the CFA has given an undertaking that mobile vessels

in its membership will not operate in certain areas. On the map that I am looking at, those areas are to the north of the line marked A to B and to the north-west of the line marked C to A. The CFA is prepared for that voluntary arrangement to be made statutory, as is proposed. However, it does not accept that a complete prohibition on mobile fishing gear to the south of the line C to A to B has been justified on any scientific basis. It proposes that the restricted mobile fishing that is allowed in the black cross-hatched area be extended north to the line C to A to B.

To the south of that, lying immediately to the north-west of the flame shell protected area, is a large rectangular area in which all forms of mobile fishing are prohibited. The CFA is not making a fuss about the fact that flame shells do not actually merit OSPAR protection; its point is that the flame shell bed is already protected by a separate part of the order and is given a buffer zone that is already more than adequate for protection. The further protection that will be given by the prohibition of fishing in the rectangular area is therefore disproportionate. In any event, it does not contain any feature justifying OSPAR or Marine (Scotland) Act 2010 protection. Mobile fishing on the proposed restricted basis should therefore still be allowed in that rectangular area.

That brings me to the end of what I have to say on the first motion.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2015 (SSI 2015/435) be annulled.

The Convener: Thank you. I invite members to join the debate, if they wish to do so.

Alex Fergusson (Galloway and West Dumfries) (Con): I chose not to ask questions earlier but I appreciate the opportunity to make a few brief comments at this stage.

I very much agree with many of the concerns that Dave Thompson raised in the question and answer session that preceded this debate. I think that the science base that has been put before us is questionable and witnesses have cast considerable doubt on the financial value of the annual catch of some of the affected vessels that has been referred to during previous discussions.

I do not understand the quantum shift that has taken place from the original SNH proposals, which, as I understand it, fulfilled all the requirements of EU directives and which the scalloping sector—rightly or wrongly—was convinced had been agreed to after the first round of consultation. Many of the problems that have been raised with us since have stemmed from the fact that that apparent agreement was not as it seemed to be.

I will comment briefly on the Luce Bay order, given that it is in my constituency. I find it really interesting because undoubtedly a further compromise has been reached with the Luce Bay order that has very much taken heed of some of the issues, particularly around safety, that were raised by my scalloping constituents, although it is also fair to say that many of the non-scalloping or dredging stakeholders around Luce Bay are not at all happy with the compromise and believe that the order may be challengeable through the courts. Of course, that is a decision for them to take.

However, if such a compromise can be reached regarding Luce Bay, where some of the concerns were just as great as they are now in regard to other MPAs, I cannot understand why it appears to be so difficult to reach a similar level of compromise for other MPAs, albeit tailored to the particular demands of each MPA. It seems strange that that is not the case.

The cabinet secretary said something interesting earlier when referring to previous measures that we passed when he was in opposition. He said that it is not always easy to understand the economic benefits of measures that we pass in this Parliament. That is absolutely true because it is difficult to measure benefits that will happen in the future. It is much easier to understand the economic disadvantages of measures that we put in place and I have no doubt at all that the orders will bring about severe economic disadvantage to the scalloping sector in particular.

On balance, I am not fully convinced that the identified disadvantage, which is measurable, is justified by the orders and I will support Jamie McGrigor’s motion.

Michael Russell: The right question to ask at this stage is: how have we got ourselves into this mess? Outside the Parliament, we have groups of people on different sides of the argument—I do not know who did what, but eggs are being thrown. Inside, we are having a debate and the cabinet secretary is talking about a very small degree of financial damage while Jamie McGrigor is talking about Armageddon taking place. I should say at the outset that I will support the MPAs.

We are in this mess because we are not learning from what is happening elsewhere. We only have to take a glance at the conflict throughout the world between traditional methods of land use or sea use and conservation to realise that this is a common problem and that there are ways to resolve it. However, none of those ways has been applied to MPAs.

I will make three points about what the problem is. The first issue is the consultation. It was not a consultation about the minutiae of dog licences but it was run in that way. I am not blaming individuals in Marine Scotland; I am not blaming Michael McLeod, who was deeply involved in it along with others. However, the consultation was badly managed and there was a mismatch. One group of people believed that they had heard one thing; another group of people believed that they had heard something else. That issue was never resolved. I met fishermen in Islay on Monday, and that is exactly what they told me. They understood that they had an agreement, but that never happened. Therefore, my first point is that great care needs to be taken in handling a consultation on such traditional activities—which, for many communities, are lifeline activities—so that everyone understands what is being talked about.

10:15

Secondly, the situation must not be confused. When I met the group that is responsible for the proposed regulating order almost a year ago, I said that there would be confusion with the on-going process for the MPAs and that the two issues should be separated, but that did not happen. Now, we have a conflation of two things, which is creating enormous difficulties. When we read coverage of this subject in the press, we read about the regulating order rather than the MPAs. That was the wrong thing to happen.

Thirdly, such confusion and passion on both sides—which I understand—leads to unacceptable behaviour. I disagree with Jamie McGrigor and will not support him in what he is seeking to do, but his actions are not shameful. Yet that is what last weekend's press release from the Community of Arran Seabed Trust said. He is quite entitled to come to the committee to argue his case. Equally, I have known the cabinet secretary for a long time—man and boy, I could say—and I know that he is not the devil incarnate, nor is he in the pay of American multimillionaire conservationists, but such material is all over the internet and elsewhere.

We must step back and recognise that there are methods of dealing with conflicts between the on-going traditional use of natural resources and the demands of conservation. I ask the cabinet secretary to learn from this experience and to move forward by saying that the next time the Government does anything similar it will create a new means of doing things, particularly given that the regulating order is on the horizon; at present, I will not support it because of the way in which the process has been handled. I am thinking perhaps of an individual or a body who could be trusted by both sides and who could show the persistence and the patience that are necessary to proceed with negotiation. If negotiation can resolve the most intractable conflicts in the world, it should be possible to have a structure and a means of resolving the conflicts that we are talking about. The fact that that has not been the case has led us to a very unhappy place.

As they approach elections, politicians always look for advantage. The cabinet secretary has talked about what he did 10 years ago. As a committee and as a Parliament, we need to find a way of dealing with these matters so that we get the best for both sides. That is possible, although it is not going to happen today.

Alex Fergusson: Hear, hear.

Sarah Boyack: I apologise—I seem to have a cold that is making me lose my voice.

I asked the cabinet secretary a couple of very detailed questions. In my time on the committee over the past year, I have noticed the heated nature of such debates. In assessing the opportunities for and the impacts on a range of fishing interests, it is really important that we get the science and the economic research right as much as we can. When we took evidence in the autumn, it was clear that there were sharply differing views on the impact of marine protected areas and of different boundaries for those MPAs being drawn on the map.

I asked the cabinet secretary what investment was available for our fishing interests. Regardless of the detail on the map, and regardless of what is proposed by the Scottish Government and what is approved by the Parliament, support should be available for fishing interests to enable them to adapt to and to mitigate the potential negative economic impacts on the very fragile rural communities that have made representations to us. It was very important to get that on the record.

I welcome the cabinet secretary's response to my questions and to those from Claudia Beamish about the need for monitoring, because we must track through the effects of what is proposed. We need investment to help some of the very small companies and small fishing interests that are involved to survive and to retain the jobs that they provide, which are important. From Dave Thompson, I picked up the fact that, for small communities, even one or two jobs can be quite important. We need financial support to enable such companies to survive.

We also need support for new industries. Opportunities might come from the network of MPAs that we will debate over the next few months. I strongly support MPAs, but they need to be clear, transparent and effective. We need to get the most out of the regeneration of the natural environment and to ensure that we gain the

benefit of the restocking and regeneration that will come from the range of marine protected areas. Like Mike Russell, I think back to the debates that we have had in the Parliament. When I convened the committee from 2003 to 2007 we had many debates about the south Arran MPAs, to which Richard Lochhead referred. There is a historical track that we can take, following the matter over the past 12 years in this Parliament.

Today is important because it comes after questions that we raised last autumn—it is a continuum. It is important that we both support our traditional fishing industries and take the new opportunities that will in come in tourism and wildlife jobs if we have the right network of MPAs and, crucially, if they receive support from the Scottish Government; we need both those things. We have tested the Government's proposals—we have done our job as a committee in asking tough questions. We need to make sure that the MPAs are not just passed, but that they are implemented properly and get the right financial support from the Scottish Government for the challenges and opportunities that they will bring.

I will support the orders today, convener, but this is not just about supporting the orders—it is about supporting the investment, the monitoring and the continuing discussion. As Mike Russell said, the issues are difficult because people have totally different views of what we are doing today. It is important that we get people's concerns on the record, but the investment that the Scottish Government has promised and the points that Claudia Beamish made about effective monitoring and promotion after today are also important.

The Convener: Thank you. I ask subsequent speakers to raise new points without going over the ground that we have already covered.

Dave Thompson: I will support the orders today—I make that clear from the start. However, as Mike Russell and other speakers have said, we have to get this right. It is a really important issue and mistakes have been made—there is no doubt about that.

People thought that they had agreement and it turned out that they did not—we have to learn from that. We will have an opportunity to do that, either next week or the week after, when we come to look at the orders that are still out to consultation, including the order for the small isles. I believe that a relatively minor tweak to the revised small isles order would satisfy everybody. I do not think that that would be a huge problem, even though it would mean that the order needed to go out to consultation again, which would knock it back into the next session of Parliament. A few months' delay to get it right would be a price worth paying.

I will support the bulk of the orders today, but we need to learn lessons and to use them as we move on in the process to consider the other orders in the next week or two.

Jim Hume: Briefly, I think that we can see across all parties a discomfort about the whole process. I go back to the points that I raised in my question about the science and the evidence—they were not fully answered. The cabinet secretary mentioned that the science was there to begin with but, if so, why did SNH recommend one thing and then another thing happened? I ask the cabinet secretary to address specifically where the science came from that caused the recommendations to be changed to what is in front of us today.

Claudia Beamish: I will not repeat any of the points made by other people in the debate, but I associate myself with the comments of my colleague Sarah Boyack on the MPAs. As we all know, in the interests of having healthy seas, MPAs are necessary statutory measures for the conservation, protection and, in some cases, recovery of our marine environments. That is also in the interests of fishing communities and the range of sectors within them, for both today and—I stress—the future.

I disassociate myself from the remarks of my colleague Jim Hume, because I have no discomfort about the MPA process—I say that for the record. I have expressed concerns, but have had some reassurance from the cabinet secretary today about the consultation process and how it was organised. I put on the record that I have also had reassurance about the future socioeconomic and environmental monitoring, which are extremely important, as is considering the possibility of having an earlier review.

I will say something very briefly about the consultation process, as I understand it. Having been a community activist in the past, I know that saying what you want or hope for in a consultation process does not mean that you can assume that that is what is going to happen. As I understand it, there was a consultation process, and the results of that from Marine Scotland, SNH and all the stakeholders went to the Scottish Government for consideration. I think that people have got somewhat confused about that process—I want to put that on the record, too.

I believe that the MPA proposal is a proportionate response, which is why I am supporting it today. I want to make the point that although I have had discussions with a number of fishermen in the past year—far more than I have had in the rest of my lifetime—I have never met one who is against marine protected areas. As members have said, MPAs are very important for carbon sequestration, biodiversity and enhancing

the marine environment for all our futures. I will support the orders.

The Convener: Bearing in mind all the points that have been made, I remind members that the evidence that the committee took in the autumn required us to look at the Wester Ross MPA, which had to be brought in as an emergency because of infractions there, which we discussed at that time. I hope that we will not find ourselves in a position where the cabinet secretary has to do the same for another area. I ask members to bear that in mind when making up their minds about how to vote on this matter. Jamie McGrigor, do you need to sum up? Sorry, I beg your pardon—it is the cabinet secretary to sum up first.

Jamie McGrigor: Just to clarify—

The Convener: Wait a minute. It is the cabinet secretary first.

Richard Lochhead: I have listened closely to members' very elegant contributions to the debate. I say at the outset that I have the utmost respect for the Clyde Fishermen's Association and I very much value the role that its members play in landing top-quality seafood and sustaining employment in many of our fishing communities in the west of Scotland.

Jamie McGrigor very eloquently outlined the Clyde Fishermen's Association's views on many of the detailed aspects of the 12 MPAs related to the motion that we are discussing, and I listened carefully to those views. However, as minister, I clearly have to listen to all voices in the debate. The Clyde Fishermen's Association and the mobile sector represent one among many voices in the debate. I also have to listen to the voices of the creelers and of the hand-divers, which are other parts of the fishing industry, as well as listen to many other sectors that have an interest in the debate and, of course, people living in communities in the west of Scotland.

In many cases, people from those communities have expressed their view, but in many other cases they have not expressed their view because of the passionate nature of the debate. Many people who have spoken to me have said, when I asked them to speak out publicly to make their views known, that they are too scared to do so. As Michael Russell quite rightly and eloquently said in his contribution, it is a sad state of affairs when people feel too scared to speak out about some of these issues.

The 12 MPAs that we are discussing as part of the motion protect our maerl beds, native oysters, sublittoral mud and mixed sediment communities—which are important environmentally—burrowed mud, horse mussel reefs, stony reefs, flame shell beds, and many other very important marine species and habitats in Scotland's waters. I believe that wider society, which has an interest in this debate, wants to protect those species and habitats as well. That is why Parliament passed the Marine (Scotland) Act 2010.

10:30

Of course feelings are very passionate on both sides of the debate, and lessons must be learned. On one hand, I will say that there were no back-room deals or agreements as part of this process. I do not understand how that misunderstanding arose from one particular sector. I have said quite clearly, all along, that I have to listen to all voices and not just to that of the mobile sector of the fishing industry. There were no agreements behind the scenes as part of this process. If that impression was given, then it should not have been given. Clearly, lessons have to be learned.

I do not think that the heat will ever be taken out of these debates. Every country in the world with an interest in its marine environment, looking at similar designations, is going through these very controversial and heated debates. We have to protect the marine features and species that I am speaking about, because they do not have a voice. The environment does not have a voice. Parliament put through this legislation to give some kind of voice to the environment. It put through the legislation to protect the environmental features that are part of our ecosystem and deliver wider benefits to society, including fishing industries and other sectors. I rehearsed some of those benefits earlier in the meeting.

My final point is about the help that will be in place, moving forwards. In response to Sarah Boyack's and other members' concerns, I want to reiterate the three-point plan.

The Government has said that it will bring forward mitigation through the European funds—that will be available if required.

I also said that environmental monitoring will be in place and as part of that £500,000 is available over three years. We will offer to deploy to the monitoring those vessels that feel they are most affected, to help offset any income that they feel they are losing as a result of the MPAs. However, only time will tell whether that will be necessary.

Finally, there will be economic monitoring. We will make sure that that is robust in the months and years ahead. However, I gave an undertaking today to Dave Thompson and—I think—Claudia Beamish, to bring forward a progress report before the end of 2016. I will make sure that that happens.

The final point that I will make is that we will continue to listen to all voices. I cannot take the

heat off this situation. An issue that may impact on people's livelihood and their income will always be controversial—people have a passionate view on those matters. There will also be people who care about the marine environment and its future. I am not saying that those groups are mutually exclusive. I think that fishermen also support the concept of MPAs and they are responsible in that way.

I will finish on this point. I believe that future generations will look back proudly at the Marine (Scotland) Act 2010 passed by this Parliament and at the network of marine protected areas that were put in place as a result of that to protect our marine environment. I believe that future generations will also enjoy the benefits of the marine environment having been protected. Therefore, I urge the committee to reject the motion to annul the order.

The Convener: Jamie McGrigor now has a chance to wind up and indicate whether he wants to press or withdraw his motion.

Jamie McGrigor: Bear in mind, convener, that I have not yet moved the second motion.

The Convener: We are very aware of the second motion that is still to come.

Jamie McGrigor: To sum up, which I will do as quickly as I can, I will quote an extract from the Scottish Government document "A strategy for marine nature conservation in Scotland". It will take me a moment.

The Convener: That is new material, Mr McGrigor.

Jamie McGrigor: Yes, it is new material.

The Convener: Well, you would not normally use new material in summing up, but please continue.

Jamie McGrigor: It is just to emphasise what I said. That Scottish Government document has as an objective

"To maximise sustainable use of our seas and minimise disruption to sustainable marine activities through proportionate marine management measures",

and it says that

"A fundamental principle of our approach to marine nature conservation is sustainable use".

That really sums it up.

We have heard a lot of very intelligent comment, and I am grateful to everyone for contributing. The fishermen are not against MPAs at all. They believe that they can avoid things such as maerl beds. The only point that I really wish to make is that no copy of the draft order was served on interested parties, as should have happened under a law that was passed in this Parliament.

The Convener: The question is, that motion S4M-15336, in the name of Jamie McGrigor, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Motion disagreed to.

The Convener: Item 3 is to consider motion S4M-15337, which asks the committee to annul the South Arran Marine Conservation Order 2015 (SSI 2015/437).

I invite Jamie McGrigor to speak to and move the motion, but we should not have a repeat of evidence concerning south Arran that has already been given in relation to the previous order. Unless it is new evidence, it is not necessarily informing us any more. I will leave you to judge that, given the business that the committee has to cover today.

Jamie McGrigor: I understand, convener, and I am very grateful for the time that you have already given me.

No consultation was conducted for the proposal that is now before the Parliament. The proposal to eliminate or restrict fishing activity goes well beyond the maximum protection for features of conservation interest that was proposed by the Scottish Government in its consultation. The proposal has now moved from the realm of nature conservation to—in my view and in that of the CFA—a subjective attack on those who derive their livelihood from the Firth of Clyde.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the South Arran Marine Conservation Order 2015 (SSI 2015/437) be annulled.

Claudia Beamish: I will not support the annulment of the order. I have taken an enormous amount of evidence. Much of that has been very heated, as other members have highlighted today and as the cabinet secretary has said. I have been reassured by the cabinet secretary on both the process for and the information about the Marine Scotland option, which allows those in some

sectors who had concerns the opportunity to fish within the area, albeit in a restricted sense. I have been reassured on that.

I am also reassured by the fact that there will be more localised socioeconomic and environmental analysis in the near future. It is important that compensation issues have been highlighted. More broadly, there will possibly be a review before six years if that is seen to be necessary.

I will not be supporting Mr McGrigor today.

Alex Fergusson: I have the same reservations that I raised under the previous item. It is right to put that on record, and I will support Mr McGrigor.

Jim Hume: In the previous debate, I asked the cabinet secretary what evidence and science had come forward, bearing in mind his comment that the science was the same at the beginning of the original consultation as it was at the end, but I did not hear from him about the specific evidence or science that he had heard that would change the SNH recommendations.

Michael Russell: I will be voting in the same way—in support of the MPAs. I repeat the request that I have made to the cabinet secretary to think very carefully about how such issues are handled in future and to find some mediation process that can avoid this type of conflict, as happens in many other places in the world.

Dave Thompson: My comments in the previous debate on the MPAs hold true in this case as well.

Richard Lochhead: To reiterate, I will ensure that the monitoring of the south Arran MPA that I referred to earlier is carried out robustly. I recognise that there are very strong feelings on the different sides of the debate, with some people feeling that we should ban all trawling in the MPA and parts of the mobile sector feeling that we have gone far too far in not making further concessions to them.

The SNH scientific advice for south Arran is to remove or avoid all pressures from mobile gear on maerl beds, maerl gravel and seagrass beds. The measures are being implemented to deliver that. SNH also advises that we reduce or limit pressure on habitats such as burrowed mud, and that is what we have done and why we are allowing trawling to continue in the outer parts of the MPA. I reiterate that 64 per cent of the area will be available for trawling and, most important, 60 per cent of the burrowed mud, which is important for the prawn fleet, will be available. As I have said, I think that that is a very pragmatic approach, which, at the same time, should help the south Arran MPA to be a beacon of sustainability and forward thinking in marine management. Many communities have taken an active role in protecting the coast on their doorstep. Likewise, I believe that the fishermen should have a sustainable living and the statistics that I have referred to many times, which show a very modest impact on their income, will hopefully ensure that that is the case.

I urge the committee to reject the motion to annul.

Jamie McGrigor: I understand that the cabinet secretary has a difficult job. I am encouraged by what he has said about looking at some of the issues again. I am also encouraged by members who, even though they might vote against me, have said that they are not entirely happy with the process that is taking place. I thank Michael Russell for his defence and what he said about me not being "shameful"—I never considered that I was that in the first place, but there we are.

Michael Russell: Long-winded, perhaps, but shameful, no.

Jamie McGrigor: I intend to press my motion, convener.

The Convener: The question is, that motion S4M-15337, in the name of Jamie McGrigor, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Motion disagreed to.

The Convener: I thank the cabinet secretary, his officials and Jamie McGrigor for attending.

Inshore Fishing (Prohibited Methods of Fishing) (Luce Bay) Order 2015 (SSI 2015/436)

Waste (Meaning of Recovery) (Miscellaneous Amendments) (Scotland) Order 2015 (SSI 2015/438)

Community Right to Buy (Scotland) Amendment Regulations 2016 (SSI 2016/4)

The Convener: Item 4 is subordinate legislation. We took evidence on SSI 2015/436

under item 1. I refer members to the papers and ask for responses.

Alex Fergusson: I would have made the comments that were made in the earlier debate under this item had they not been made already. I have nothing further to add. A reasonable compromise has been reached, although I accept that some of my constituents are not happy.

The Convener: As there are no further comments on the instruments, does the committee agree that it does not want to make any recommendations on them?

Members *indicated agreement.*

The Convener: There will be a brief suspension to allow for a change of witnesses.

10:44

Meeting suspended.

10:51

On resuming—

Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016 [Draft]

The Convener: The fifth item is to take evidence on draft regulations. I welcome the Minister for Environment, Climate Change and Land Reform, Aileen McLeod, and her officials from the Scottish Government: Joyce Carr, the team leader in the environmental quality division, and Neil Ritchie, the branch head of the environmental quality division. I invite the minister to make some opening remarks on the regulations.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): I am pleased to be here this morning to support the committee's consideration of the Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016. The instrument is primarily a technical one, whose aim is to clarify the boundary between our legal regime for the remediation of contaminated land and that for protecting and improving Scotland's water environment.

By way of background, our local authorities and the Scottish Environment Protection Agency are responsible for dealing with land that is contaminated as a result of historical activity and could pose a significant risk of harm to human health or to the environment. For instance, if contaminated land is having a significant impact on the water environment, it is normally a matter for SEPA to take responsibility for remediation at such sites, and where that is not the case it is normally the local authorities that take responsibility for remediation. That approach works well in practice.

However, there is a further complexity to the legislative landscape. SEPA has responsibility for taking enforcement action to remediate pollution to the water environment arising from current activities using the provisions of the Water Environment (Controlled Activities) (Scotland) Regulations 2011. That introduces a lack of clarity at the boundary between our regime for addressing land contaminated by historical activities and our regime for addressing pollution caused by current activities.

We have just published the second round of river basin management plans, and in looking ahead to delivery of the plans SEPA and the local authorities have been reviewing the legal and policy framework for delivering improvements where contaminated land is identified as a pressure on the water environment. They have indicated that the lack of clarity at the boundary between regimes could lead to confusion about who is responsible for taking the remedial action in certain circumstances. I believe that it is essential that our legal framework is clear so that action can properly and swiftly be taken by the most appropriate authority where contaminated land is identified. I therefore recommend that the committee support the instrument.

The Convener: Are there any questions for the minister?

Graeme Dey (Angus South) (SNP): Can we be assured that the local authorities and SEPA are happy about where the order takes us? Are they fully comfortable with what their roles and responsibilities will be?

Aileen McLeod: Yes. SEPA has been working with the local authorities with the aim of delivering the framework.

Claudia Beamish: Good morning to you and your officials, minister. How will the recent weather conditions and the serious flooding that has happened be taken into account if the regulations are agreed to?

Aileen McLeod: Claudia Beamish makes a good point. I ask Neil Ritchie to give some detail on it.

Neil Ritchie (Scottish Government): I do not think that the current severe weather conditions will impact on the regulations. The more pertinent point is how SEPA has offered to be pragmatic and support land managers and others to deal with impacts on the water environment through its

regime, such as the controlled activities regulations—

Claudia Beamish: Sorry, I did not hear that. The control what?

Neil Ritchie: The Water Environment (Controlled Activities) (Scotland) Regulations 2011. They regulate the engineering-related activities around management of the water environment. SEPA is engaging actively with land managers on that.

Aileen McLeod: I will add a point of information for the member: SEPA has recently published its manual on flood risk management. Claudia Beamish might find it helpful to have a look at that as well.

The Convener: If members do not wish to make any other points, we will move to the next item of business, which is consideration of motion S4M-15274. I invite the minister to move the motion.

Motion moved,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Water Environment (Amendment of Part IIA of the Environmental Protection Act 1990: Contaminated Land) (Scotland) Regulations 2016 [draft] be approved.—[*Aileen McLeod.*]

Motion agreed to.

The Convener: I thank Aileen McLeod and her officials. We will record the result of that consideration.

I will suspend the meeting briefly for the turnaround of officials for the next item, to which we will proceed as quickly as we can.

10:57

Meeting suspended.

10:59

On resuming—

Land Reform (Scotland) Bill: Stage 2

The Convener: Agenda item 7 is the second day of consideration of amendments to the Land Reform (Scotland) Bill. We will pick up where we left off last week with part 3 of the bill. We will consider amendments up to, and not further than, part 9—if we have the time. We will have a brief suspension after consideration of amendments to part 5.

I welcome back the Minister for Environment, Climate Change and Land Reform and the officials who will be present for amendments to parts 3 to 5. Officials are not permitted to speak on the record in these proceedings. I expect that we will be joined later by Patrick Harvie, who has lodged amendments.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which sets out the amendments in the order in which they will be debated, and the groupings list, which was published on Monday.

There will be one debate on each group of amendments. I will first call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in that group but who wish to speak should indicate that to me or the clerk. If the minister has not already spoken on the group, I will invite her to contribute to the debate just before we move to the winding-up speech. There might be times when I allow a little more flexibility for members to respond to points during the debate, but that should be rationed, if at all possible.

The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following the debate on the group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or withdraw it. If the member wishes to press the amendment, I will put the question on it. If the member wishes to withdraw the amendment after it has been moved, I will check whether any member objects. If any member objects, the amendment cannot be withdrawn and the committee will immediately move to the vote.

If any member does not wish to move their amendment when it is called, they should say “not moved”. Any other MSP present may move such an amendment. However, if no one moves the

amendment, I will immediately call the next amendment on the marshalled list.

Only committee members will be allowed to vote. Voting is by a show of hands. It is important that members keep their hands clearly raised until the clerks have recorded the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put the question on each section at the appropriate point.

If we do not reach the end of part 9 today, we will stop at an appropriate point. We will pick up where we leave off next week, on day 3 of consideration of amendments. I hope that that is all clear to everybody.

Section 36—Power of Keeper to request information relating to proprietors of land etc

The Convener: We come to the group on the power of the keeper of the Registers of Scotland to request information and the procedure for regulation. Amendment 31, in the name of the minister, is grouped with amendments 32 to 35. I call the minister to move amendment 31 and speak to all the amendments in the group.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): Section 36 inserts into the Land Registration etc (Scotland) Act 2012 new section 48A, which enables regulations to be made enabling the keeper of the Registers of Scotland to request information relating to proprietors of land. That may include information about the category of a proprietor and information about individuals with a controlling interest in a proprietor.

As I outlined at the committee last week, in setting out our proposals to amend part 3 of the bill, the Government intends to lodge amendments at stage 3 to amend section 36 to remove reference to requesting information about individuals with a controlling interest. That part of section 36 will not be needed because of the new regulation-making power that is to be brought forward at stage 3 for a public register of controlling interests in landowners. It is the Government's intention to retain section 36 so that regulations can be made enabling the keeper to request information about the categories of proprietors. That information will be useful in establishing further information on patterns of land ownership, which will help in developing policies in relation to land use and management.

The Government is still considering the committee's suggestion that section 36 be amended to enable the keeper to require information about categories of proprietors and we will certainly keep the committee updated on our position in relation to that ahead of stage 3.

Although the Government's view is that, other than its first use, the power in new section 48A would be used to make regulations that were mainly minor and technical in nature, in its report on the bill at stage 1, the Delegated Powers and Law Reform Committee expressed the view that the power is not limited to that. That committee heard in oral evidence that the scheme for requesting information could change over time, with additional categories of information about proprietors being requested.

In addition, the Delegated Powers and Law Reform Committee said that there was potential for changes to be made to the regulations on matters such as the consent of individuals, the disclosure of information and the corresponding potential for interference with article 8 rights. In light of those concerns, that committee recommended that the affirmative procedure should apply to all regulations that are made under new section 48A.

The Government recognises the Delegated Powers and Law Reform Committee's concerns, and amendments 31 to 35 provide that the affirmative procedure will apply to all regulations that are made under new section 48A of the 2012 act.

I move amendment 31.

Amendment 31 agreed to.

Amendments 32 to 35 moved—[Aileen McLeod]—and agreed to.

The Convener: Amendment 36, in the name of Graeme Dey, has already been debated with amendment 103. I ask Graeme Dey whether he wishes to move his amendment.

Graeme Dey: My amendment would have deleted section 36, but given that we have just approved a series of amendments to section 36 and that the Scottish Government intends to use parts of that section to make further progress on transparency at stage 3, I will not move it.

Amendment 36 not moved.

Section 36, as amended, agreed to.

Section 37—Guidance on engaging communities in decisions relating to land

The Convener: We move to group 2, on guidance on engaging communities in decisions relating to land: purpose of engagement, content of guidance etc. Amendment 13, in the name of Sarah Boyack, is grouped with amendments 37, 81, 38, 108 and 39.

Sarah Boyack: It is clear that new opportunities will flow from the guidance that is envisaged for this part of the bill, and it is to be hoped that

owners and communities will take it seriously and work with it in the spirit that is intended. However, the content of the guidance is not explicit. The bill simply states that

> "The Scottish Ministers must issue guidance about engaging",

but it does not specify to what end. Furthermore, it is clear that it would be easy for many to engage and then to ignore matters arising from that engagement.

Having guidance on engagement implies that more is required of an owner than simply providing information to a community, otherwise section 37 would simply provide for that. The requirement goes further, but it is not clear how far it goes.

In my view, the purpose of meaningful engagement would be to try to seek a measure of agreement between the owner and the community on key strategic land use and management questions, and maybe even on any questions of ownership of the land itself that might flow out of the engagement process. I believe that it is important to make it clear in the bill that engagement is required not just for its own sake but with the purpose of seeking to secure agreement on key land use and management issues.

I hope that my amendment 13, which seeks to make that clear, will help to raise the bar and clarify what is intended in that respect. To be clear, the seeking of agreement means not that agreement must be secured but that an honest attempt should be made. Clarity would help to shape the guidance and make its purpose much clearer to all involved. I look forward to hearing what the minister has to say on amendment 13.

With regard to my amendment 102, the policy memorandum states that the guidance

> "will apply to all land owners".

However, the wording of the bill does not specify that in depth.

The Convener: Pardon me—

Sarah Boyack: Sorry, have I got that wrong? It is amendment 108. I am speaking about the guidance on engaging communities in decisions, as set out in the briefing paper that we received. I am not speaking to amendment 102.

The Convener: That is okay, but you said amendment 102.

Sarah Boyack: Sorry—I meant amendment 108. From the earlier discussion members will have been able to tell that my voice is going, but clearly it must be more than that. Thank you for picking that up, convener.

The policy memorandum states that the section on guidance on engaging communities will apply "to all landowners", but that is not what is said on the face of the bill. Amendment 108 is a probing amendment to get the minister to put the matter on record for clarity.

The policy memorandum says:

> "all land owners and those with a controlling interest in land, who have substantial land holdings or land close to communities, where their decisions in relation to land could affect communities should engage and/or consult with those communities over decisions."

That is not what is said in the bill. Scottish Environment LINK was keen for me to lodge amendment 108 so that we get clarity from the minister on that point.

There are a number of circumstances where it would be useful to clarify the extent to which landowners must consult communities when they take action. The example given by Scottish Environment LINK was whether someone would have to consult communities if they were spraying their crops with pesticides. A sense of where the boundaries are would be quite useful.

The comment that I received about section 37 was that the advice seemed pretty weak. I would be grateful if the minister could pick that up in her comments.

I welcome amendments 37 and 38. We had an excellent discussion last week about the importance of human rights. Someone mentioned that the First Minister had said that it is about putting the justice into social justice—the key thing is for human rights to be embedded in legislation effectively. Amendment 81, in the name of Mike Russell, attempts to ensure that that happens. I am keen to hear what the minister has to say on that.

On amendment 37, it is important that there is a chance to raise awareness of guidance. Laying guidance before the Scottish Parliament enables the relevant committee to discuss it, MSPs to comment on it and engagement to take place with stakeholders so that we get a wide number of people involved in what will be important discussions in the early implementation of the bill.

I move amendment 13.

Aileen McLeod: In drawing up the guidance, ministers will consult a wide range of stakeholders, and the guidance will define the different sorts of engagement that will be appropriate in different circumstances. When making decisions about land, landowners will usually take account of a number of considerations, such as adherence to statutory and legal requirements and profitability. The aim of the part 4 guidance is to help foster that spirit of co-operation between landowners and

communities, so that communities are properly engaged in decisions that affect them. We expect landowners to take account of the views of communities as part of their considerations.

Amendment 13 would make the guidance focus on seeking the agreement of communities. Although ministers recognise that seeking a consensus between landowners and communities is desirable, there will be instances when, following consultation, their respective views differ. That is a legitimate consequence of open engagement. In addition, the members of the community itself may not reach a unanimous view.

Amendment 13 might also prevent ministers from including in the guidance useful material that is not about seeking agreement. In effect, the amendment could lead to a heavier burden of engagement for landowners than currently exists for public authorities for many purposes. In turn, that would act as a disincentive to open, discursive engagement. At this point, it is more important that we create a culture of co-operation, which is what part 4 seeks to achieve.

In response to Sarah Boyack's comment I say that the extent of the guidance will be developed in close working partnership with a range of relevant stakeholders. We do not want to pre-empt that process at this early stage. I recognise the good intentions behind amendment 13, but I cannot support it.

I move on to amendments 37 and 38. The Scottish Government places a high priority on furthering equalities and the protection of human rights. Amendment 37 will require the Scottish ministers, when preparing the part 4 guidance, to have regard to the desirability of

"promoting respect for, and observance of, relevant human rights, ... encouraging equal opportunities"

and

"furthering the reduction of inequalities of outcome which result from socio-economic disadvantage".

11:15

As I said at last week's meeting, an example of "relevant human rights" might be the International Covenant on Economic, Social and Cultural Rights. Consideration of article 11 of the international covenant, on the right to adequate housing, might mean that in drawing up guidance ministers would give particular consideration to the need for community engagement in decisions that related to housing. Ministers might also consider article 6, on the right to work, when making decisions that might affect employment in the local area.

The reference to

"encouraging equal opportunities ... within the meaning of section L2 in part 2 of schedule 5 to the Scotland Act 1998"

will ensure that in preparing the guidance ministers consider equalities issues, including sex discrimination, race relations and disabilities, as well as the need to further reduce the inequalities of outcome that result from socioeconomic disadvantage.

Amendment 38 defines "relevant human rights" as

"such human rights as the Scottish Ministers consider to be relevant to the preparation of the guidance."

That will ensure that the Scottish ministers consider human rights treaties or legislation relevant to the preparation of the guidance.

Together, amendments 37 and 38 will require the Scottish ministers to take a progressive approach to human rights and equalities when preparing the guidance. Given that I have lodged amendments 37 and 38, which will require ministers to have regard for the desirability of

"promoting respect for, and observance of, relevant human rights, ... encouraging equal opportunities"

and

"furthering the reduction of inequalities of outcome which result from socio-economic disadvantage",

when they prepare the part 4 guidance, I ask Mr Russell not to move amendment 81.

I have indicated that I am content, in principle, to accept amendments 97 and 97A, which relate to the definition of "human rights". We will consider whether further change to part 4 is required at stage 3 in light of that.

I understand that amendment 108 was lodged as a result of concern that the guidance will exclude altogether certain types of person with control over land, such as charitable or agricultural landowners. That is not the intention. I am happy to confirm on the record that the intention is that the guidance will apply to all persons with control over land.

However, in producing the guidance it will be necessary to allow for flexibility in order to recognise that, in different circumstances, different groups of persons with control over land might be required to engage. For example, there might be circumstances in which a landowner and a tenant have control over different types of decision on the same piece of land. For some decisions, it will be appropriate for the landowner to carry out the community engagement; in other circumstances it might be more appropriate for the tenant to carry out the community engagement. Amendment 108 risks losing that flexibility, and I ask Sarah Boyack to consider not moving it.

On amendment 39, we welcome the Parliament's continued interest and involvement in the implementation of the bill after it has been passed. Amendment 39 will require the Scottish ministers to lay before the Parliament the first part 4 guidance, which will give the Parliament the opportunity to consider the guidance as it sees fit, in accordance with the standing orders. We do not think it appropriate for the Scottish ministers to impose on the Parliament's work programme. However, the first guidance will be required to be laid before the Parliament and it will be for the Parliament, not ministers, to decide whether to debate it.

Michael Russell: I heard what the minister said and I am broadly content with amendment 37—with a caveat, as she will expect, about the term "relevant human rights" in proposed paragraph (a) of the amended subsection. There is potential to create confusion—not to say conflict—in the bill, because my amendment 97, as amended by Sarah Boyack's amendment 97A, will amend section 98, "General interpretation", whereas amendment 38, in the name of the minister, contains another definition, with the term "relevant human rights" meaning whatever the minister and her colleagues think it means.

Although I defer to no one in my respect and admiration for the minister's judgment, she might not always be here; there might be other ministers whose definition of "relevant human rights" is not the same as mine. I accept that her amendment 37 improves on the intention of my amendment 81, so when the moment comes, I will not press amendment 81. However, I seek an assurance that consideration will be given to the conflict between amendment 38 and amendment 97, as amended by amendment 97A, so that we have some clarity in the bill.

As far as the rest of the matter is concerned, I entirely see what Sarah Boyack is seeking to achieve. I would have thought that subsequent amendments to the section would achieve the same thing, but the minister has committed to the issue of consultation.

I think that relying on the good will of estates that have shown no interest in the matter up to now is hopeful, if I may use that term. The good estates, which do this anyway, do not need any additional legislation. Frankly, I think that the bad estates will think that the issue is irrelevant and that they can get away with it. Therefore I hope to hear that some actions will be taken, even if it is not through my amendment, to have sanctions. It is possible that the ones in the middle might be slightly persuaded by the approach, but I do not think that there are many of them. Similarly, I do not think that there are many really bad estates. I am not confident that appealing to their better nature will, in the end, succeed, but let us see what happens.

Graeme Dey: I welcome the clarity that the minister provided on amendment 108 because at first glance it seemed to have merit, but I am content with what I have heard.

Alex Fergusson: I am sorry to take away from the air of consensus that there seems to be here, but I have concerns about this group of amendments. I share the minister's reservations about Sarah Boyack's amendment 13, in that I think that the change from "engagement" to "agreement" is much more significant than the wording might suggest.

Taking the whole group together, with the exception of amendment 39, with which I partly agree, I think that the amendments that are laid out in front of us seek to move away from the objective of furthering sustainable development to a range of new objectives that do not align with the policy memorandum or the bill's original intent—particularly the minister's amendments. Michael Russell said that he will not move amendment 81.

Unless I receive some considerable assurance from the minister that this is not a move away from the policy memorandum and the bill's original intent, I intend to vote against the amendments.

The Convener: I ask the minister to respond to that point before Sarah Boyack winds up.

Aileen McLeod: Do you want me to comment on some of the other points that have been raised or just specifically Mr Fergusson's point?

The Convener: Will you comment on Alex Fergusson's point?

Aileen McLeod: I say to Mr Fergusson that the things that we are adding do not move away from the intention of what we are trying to do in part 5 of the bill to further sustainable development.

The Convener: Thank you for that, minister. I ask Sarah Boyack to wind up and say whether she wishes to press or withdraw amendment 13.

Sarah Boyack: We have had a useful debate. To be clear, amendment 13 seeks the community's agreement; it does not say that that must be secured—that would be a higher bar again. It attempts to make sure that communities are properly engaged. It is tougher than what is in the bill as introduced, and I think that it is an important, if small, amendment, so I am keen to press it.

I listened carefully to the minister and I take on board the comments that Mike Russell made. Amendment 13 is intended to concentrate landowners' minds, to secure everybody's engagement and involvement in a much more

effective way and to strengthen the bill. I think that it would be useful amendment.

Both the minister and Mike Russell made important points about making sure that human rights are properly incorporated in the bill. Mike Russell's comments about amendments 97 and 97A were also important. When we get to stage 3, or in the period between now and stage 3, we will want to look at where the bill has ended up, to make sure that it is consistent throughout. Mike Russell's points were absolutely relevant, particularly in the context of the letter that we received last week from the Scottish Human Rights Commission.

I will not push my amendment 108. It was a probing amendment and I am pleased with the comments that the minister put on the record. They will be useful in providing clarity to all those who will be expected to implement the bill.

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

Against

Dey, Graeme (Angus South) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 13 disagreed to.

Amendment 37 moved—[Aileen McLeod].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Against

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

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 37 agreed to.

Amendment 81 not moved.

Amendment 38 moved—[Aileen McLeod].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Against

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

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 38 agreed to.

Amendment 108 not moved.

Amendment 39 moved—[Aileen McLeod]—and agreed to.

The Convener: Group 3 is on compliance with guidance on engaging communities in decisions relating to land. Amendment 14, in the name of Sarah Boyack, is grouped with amendments 82 and 98.

Sarah Boyack: When ministers set out a clear process it is crucial that that process be both applied and adhered to properly. The key issue is that we should monitor and learn from experience. I believe that three years is an appropriate length of time.

Evidence from communities earlier in the year—for example, the evidence from Fife—said that the guidance from the previous legislation, the Land Reform (Scotland) Act 2003, is difficult for communities to work with and that sometimes they cannot get advice or guidance from officials. That makes the case for ensuring that guidance is accessible and helpful. Its impact will be determined by how well it is crafted and whether advice is available. We need an honest review process, which I would prefer to see within the lifetime of the next Government, and not being kicked into the long grass.

I support Mike Russell's amendments 82 and 98 and think that they are helpful. They are about ensuring that people implement the guidance, that due process is followed and that the consequences of non-compliance are spelled out. I hope that that will concentrate people's minds on

the consequences of non-compliance. For those reasons, I hope that the amendments in the group will be supported.

I move amendment 14.

11:30

Michael Russell: As I indicated in my comments on the previous group of amendments, I think that section 37 needs substantial strengthening in order to say to the few estates—I do not think that there are many—that do not engage, that are held both by charities and by private individuals, that there are and should be sanctions for not engaging with communities.

I have raised the issue of the difficulties that the residents around Carrick castle, near Lochgoilhead, have had with the development in their area. One of the weaknesses there was that there was nothing to force compliance yet the relevant landowner was in receipt of substantial public moneys to plant trees. One of the sanctions that is now used in wildlife crime—it was difficult to introduce, but it was introduced—is the application of cross-compliance to ensure that public money does not go to people who do not further public objectives. The public objective in this case would be to ensure that there was effective and meaningful consultation of communities about plans for the area in which they live. That would be a heavy responsibility for third sector bodies, as well—a number of third sector bodies own land throughout Scotland, so they would have to ensure that their objectives tied in with the objectives of the communities for which they had taken responsibility.

As an amendment from a back bencher, amendment 82 may not be phrased exactly as the Government would wish it to be, so I will understand if the Government finds difficulties with it and wants to go away and think about. Nevertheless, I seek from the Government a commitment to finding a way to enforce the guidance and not to leave that until after a review. I support Sarah Boyack's views on having a review, but the provisions should become effective when the guidance is issued, and the Government should be willing to act on them. I am interested to hear from the minister whether that could be done in another way that the Government believes would be more effective.

However, I remind the minister that amendment 82 is not dissimilar to what is in the policy memorandum to the bill. The minister spoke effectively about that when she gave evidence to the committee, and I know that she wants the guidelines to be effective. Therefore, let us find a way to ensure that the very few bad landowners in Scotland who are not willing to engage do engage because they know that they have to.

Aileen McLeod: I welcome the intention behind Mike Russell's and Sarah Boyack's amendments, which seek to ensure that the guidance that is to be developed under part 4 is as effective as it can be in promoting engagement between landowners and their tenants and communities on land-related decisions. I absolutely agree with that.

Part 4 is aimed fundamentally at improving collaboration and engagement between landowners and communities, and it stresses that there are responsibilities on both sides. Communities need to be clear about their needs and landowners need to take those needs into account in their decision making. The committee's stage 1 report indicated that there is strong support for that in principle and—as I confirmed when I gave evidence to the committee and spoke in Parliament at stage 1—my intention is to develop the guidance that is provided for in part 4 through consultation and in partnership with all parties that have interests. By bringing everyone together to develop the guidance, we will not only ensure that the guidance is as effective as it can be, but will begin to build the relationships and understandings between parties that will be necessary for the guidance to have the desired impact.

It is important that that co-productive process is not pre-empted by the Government or Parliament. How best to develop and review the guidance and monitor its effectiveness, thereby ensuring that the guidance is considered and followed, will be discussed and decided in developing the guidance. I reassure Sarah Boyack that part of developing the guidance will be consideration of what support both communities and landowners require to access the guidance effectively. I appreciate that Sarah Boyack's amendment seeks to provide reassurance that progress against the guidance will be monitored and assessed and that Parliament will be provided with an opportunity to assess that progress. Although I currently consider three years to be too short a timeframe to allow real progress to be made and reviewed, and although I consider that there is a greater need for flexibility than is currently provided for in amendment 14, I would be content to accept amendment 14 in principle pending a further discussion about an appropriate timescale for the review, which would be confirmed at stage 3.

On Michael Russell's amendments 82 and 98, I stress again that how best to review and monitor the effectiveness of the guidance and to ensure that it is considered and followed will be discussed and decided as part of developing the guidance.

With part 5 applications, I appreciate the desire for greater clarification on potential options, should

the guidance not be followed. As we state clearly in the policy memorandum, and as Mr Russell mentioned, ministers could consider a lack of consideration of part 4 guidance and a lack of engagement as part of the evidence in assessing a part 5 right-to-buy application. That may provide evidence of why the transfer of land to the community body or nominated third party is the only way of achieving a desired benefit to the community. However, I stress that, depending on the final content of the guidance and the circumstances of each case, whether the guidance has been considered and followed may or may not be a relevant consideration in determining whether the conditions for consenting to a part 5 application have been met.

I would welcome the opportunity to work with Michael Russell on a stage 3 amendment that would make it clearer in the bill that failure to consider or follow the guidance can be a relevant consideration in a part 5 application. The most appropriate way to do that would be through an amendment to part 5 rather than an amendment to part 4.

On future grants and awards, the criteria and conditions for awards and grants can take into account only factors that are relevant and proportionate to the grant or contracts. Attempts to make non-compliance with the part 4 guidance a factor in assessing grants and awards can be expected to be at high risk of a legal challenge where the link is not relevant to the purpose of the grant, or does not impact proportionately on the grant. However, in developing the detail of the guidance, we will be able to consider and begin identifying where it is appropriate to add that it is just in relation to future awards and grants that the Scottish ministers control the criteria that relate to engagement and consideration of the guidance. We will also be able to begin working with the public, private and third sectors to encourage similar considerations across all awarded grant providers.

It is not necessary to legislate to achieve that. There are a range of tools that we can use to promote better engagement and ensure that there are clear expectations that guidance should be followed. A range of measures will be considered as part of the development of that policy. For example, the Scottish business pledge has been effective in building stakeholder alliance in support of a policy. Businesses are signing up to make a pledge about paying the living wage and about a range of other actions that bring business benefits and inclusive growth. We will consider whether a similar model could be part of the development of the guidance. Obviously, we will monitor the guidance's implementation against our policy intentions.

We will return to the issue if we identify failures in the operation of the guidance, but it is important to ensure that we have all the necessary tools to support and promote consideration of the guidance. I appreciate that colleagues seek some confirmation in the bill that that will happen. To give the committee and Mr Russell reassurance on that, I would be happy to have the opportunity to work further with Mr Russell ahead of stage 3 on a proposal to expand the purpose of the review and the report that is to be produced as a result of Sarah Boyack's amendment 14 to include an assessment of whether there is a need for further action or tools to ensure that the guidance is considered and followed. If he finds my offer agreeable, I ask him not to move his amendments and to consider the alternatives.

I confirm that I would welcome the committee accepting amendment 14 and would welcome Sarah Boyack's agreement to discuss further with me and the committee whether the bill could be further amended at stage 3 in relation to timescales.

Sarah Boyack: As I understand it, the minister has agreed, if the committee is minded to agree to my amendment 14 today, to discuss whether it might be appropriate to tweak the wording at stage 3. I very much welcome that.

I realised, when I was reading amendment 14 late last night and thinking of what I would say about it this morning, that the first part is absolutely crucial: we should have a report to Parliament assessing the effectiveness of the guidance. That is important in principle. It is also important that the first report would be produced about three years after the guidance is laid. It would therefore be produced not immediately, but when the minister—whoever that is in the next session of Parliament—is able to put that in place. I thought that three years was the most appropriate timescale when I was putting amendment 14 together. If that is the key issue that the minister is thinking about coming back to at stage 3, I would be happy to meet her and discuss it. I welcome the fact that she thinks that colleagues should support amendment 14 today.

I welcome Michael Russell's comments about cross-compliance and meaningful consultation. I agree with him that the issue lies not with most or all landowners, but with a small number of landowners who could, to date, have done a lot more to work constructively with communities. I hear what the minister has said, and the objectives of Michael Russell's amendments are spot on. As back benchers, we always do the best that we can to try to draft the perfect amendment. In that spirit, Michael Russell's amendment was absolutely correct. I am keen to have my amendment 14

accepted today, and I am happy to discuss the detail of it thereafter.

I will press amendment 14 and seek the committee's support.

Amendment 14 agreed to.

Section 37, as amended, agreed to.

After section 37

The Convener: Amendment 82, in the name of Michael Russell, has already been debated with amendment 14. I ask Mr Russell whether or not he wishes to move his amendment.

Michael Russell: I will not move my amendment. I am not fully satisfied, but I take on board the minister's commitment to discuss the issues with me, and I reserve the right to lodge such an amendment again at stage 3.

Amendment 82 not moved.

Section 38—Meaning of "land"

The Convener: We move to group 4, on ability to purchase shooting rights under Part 5. Amendment 83, in the name of Claudia Beamish, is the only amendment in the group.

Claudia Beamish: Amendment 83 is a probing amendment to seek clarification on whether shooting rights can be sold as separate entities, as mineral rights and fishing rights are. I draw the attention of the committee and the minister to section 38—"The meaning of 'land'". Everyone will be pleased to hear that I am not going to read out all the meanings. Section 38(1)(a)(v) refers to salmon rights and mineral rights, so I seek clarification on the matter.

I move amendment 83.

Aileen McLeod: I thank Claudia Beamish for lodging amendment 83, which is well intentioned and seeks to give communities the opportunity to buy shooting rights. Section 38 of the bill defines what is included as land for the purposes of part 5 of the bill. The definition of "land" does not include shooting rights that are owned separately from the land to which they relate. The reason is that those shooting rights may be leased, but they cannot be conveyed separately from land. To clarify, shooting rights cannot be transferred separately from the land over which they can be exercised.

Where salmon fishing rights and mineral rights are owned separately from the land in respect of which they are eligible, those rights are included in the definition of "land", and an application can be made under part 5 to purchase those rights. However, such rights can be purchased under part 5 only if the community body has bought or is seeking to buy under part 5 the land in respect of which those rights are eligible.

Although I appreciate the good intentions behind Claudia Beamish's amendment 83, I ask her to seek to withdraw it.

Claudia Beamish: If understood the minister's answer, I have the clarification that I needed on rights.

Amendment 83, by agreement, withdrawn.

Sections 38 and 39 agreed to.

Section 40—Eligible land: salmon fishings and mineral rights

11:45

The Convener: Group 5 is on the period within which an application to buy salmon fishing, mineral rights or tenant's interests may be made. Amendment 40, in the name of the minister, is grouped with amendments 41 to 43.

Aileen McLeod: Government amendments 40 to 43 are technical amendments that clarify the point at which the relevant period ends for the purposes of determining when an application can be made to buy land consisting only of salmon fishing and mineral rights under section 40, or to buy tenant's interests under section 41. Sections 40(3)(a) and 41(6)(a) set out that the relevant period ends on the date that the part 5 community body or third-party purchaser withdraws its confirmation to purchase the land that the salmon fishing, mineral rights or tenant's interests relate to.

Amendments 40 to 43 make it clear that where the part 5 community body or third-party purchaser fails to complete the purchase of the related land for any other reason, the relevant period ends on the date that the purchase failed.

I move amendment 40.

Amendment 40 agreed to.

Amendment 41 moved—[Aileen McLeod]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Eligible land: tenant's interests

Amendments 42 and 43 moved—[Aileen McLeod]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Part 5 community bodies

The Convener: Group 6 is on types of community body permitted to buy land under part 5. Amendment 84, in the name of Claudia Beamish, is grouped with amendments 90 and 93.

Claudia Beamish: Amendment 84 deals with the issue of communities of interest, which also came up during consideration of the Community Empowerment (Scotland) Bill. I make it clear that I understand that local communities are at the heart of this part of the Land Reform (Scotland) Bill. Local communities want to be in charge of their own future, working together, and of course I respect that. However, communities of interest may also have a small place within the aims of the bill. Communities can be more complex than geographically proximate groups, particularly in rural areas. An example that the committee considered was the Mountain Bothies Association. A local community might not have an interest in mountain bothies, because of their remoteness, but it could be in the interest of broader communities to own land in order to have mountain bothies for recreational and wildlife-watching purposes.

The Scottish Tenant Farmers Association has highlighted that communities of interest, such as tenant farmers working together, may wish to purchase land in a particular local community. Some have argued that communities might have interests more generally, such as walkers belonging to a Scotland-wide organisation. I simply point that out that the issue has been raised; I do not necessarily support that point because I respect the local communities aspect of the bill.

Amendment 84 states that ministers may

“disapply the requirement in subsection (9) for a community to be defined with reference to postcode units or a type of area”.

“Disapply” is a new word for me. As I have stated in the amendment, that would apply only if it were in the public interest.

Amendment 93 is a consequential amendment relating to communities of interest.

I move amendment 84.

Alex Fergusson: Claudia Beamish has been very persistent on the issue and I understand where she is coming from. However, I have an issue with how this relates to the final outcome of the Community Empowerment (Scotland) Act 2015. I know that the Scottish Government said previously that

“Changing the definition to include communities of interest could potentially create further problems for local communities by allowing particular interest groups to compete for ownership of land in the locality.”

I agree with that point and I hope that the minister will stick to it.

There is latitude in the fact that it is not beyond imagination or even possibility that the type of groups to which Claudia Beamish refers could comply with the legislation given that all they need is a postcode or postal address in the area that is being considered. Given that point, I hope that the minister will stick to her previous commitment. I intend to vote against amendment 84.

Michael Russell: I was not persuaded by the idea when it was discussed as part of the Community Empowerment (Scotland) Bill. Although I do not think that amendment 84 is the right one, it is becoming a grey area. It is quite conceivable that bodies might not have firm community backing—I know of several such bodies—and cannot get it, either because there is no community in place, or because some of the community is not aligned with that body’s interest. Such bodies are restricted in taking advantage of this important legislation. There is a need for the Government to reconsider the issue and find a way forward. Perhaps discussion between now and stage 3 might result in that.

Aileen McLeod: I am grateful to Claudia Beamish for lodging this group of amendments, which has provided me with a further opportunity to reflect on the purpose of part 5 of the bill and the definition of communities within it. How land is used in a local area can have a significant and direct impact on people in local communities. Local communities often have little opportunity to influence landowners’ decisions. The bill proposes a right to buy land “to further sustainable development” specifically to support local communities.

The amendments in the group seek to make provision to allow communities of interest to exercise the part 5 right to buy. The aim of part 5 of the bill is to support sustainable development of land to develop local communities and to avoid harm to such communities, giving them more of a say over what happens in their area. The Scottish Government therefore does not support the widening of the definition to include communities of interest, because that could potentially create further problems for local communities by allowing particular interest groups to compete for ownership of land in the locality.

It would be difficult to see how a community of interest could demonstrate that it met both the significant harm and significant benefit tests in the sustainable conditions in section 47. It may also be difficult for communities of interest to show how the transfer of land to them has led to further sustainable development of the land, when the community of interest may be geographically dispersed.

Although I cannot support the amendments, I hope that the committee will recognise that there is nothing to prevent a local community from going into partnership with a community of interest as a third-party purchaser, provided of course that it is

satisfied that the community of interest could deliver the desired benefits to the local community and that all the sustainable development conditions have been met.

That said, the issues that the amendments raise are serious and they demand further consideration. I do not think that they fall within the focus of part 5, which is on local communities. However, I will give these issues further consideration outwith the bill process, because we will want to have a proper look at them to find a way forward. A lot of issues were raised to do with different types of group, such as the Mountain Bothies Association, Travellers and hutters. We are happy to return to the issue to give it the proper, serious consideration that it deserves.

Claudia Beamish: Is it possible to seek some clarification from the minister before I wind up, convener?

The Convener: Yes.

Claudia Beamish: In considering whether to seek to withdraw amendment 84, I would find it helpful to understand how it might be possible to look at the issue further if the minister does not think that it is within the spirit and aims of the bill.

Aileen McLeod: I would certainly be happy to have a further discussion with Claudia Beamish about how best to do that as part of the next stage of the land reform process. I am very keen to do that, because the issues that she raises are serious ones that deserve proper consideration. I am happy to work with her on that and I hope that that will give her the reassurance that she seeks.

Claudia Beamish: I thank the minister for that reassurance. I completely respect and strongly support the spirit and aims of the bill in relation to local communities. However, in relation to Alex Fergusson's comment that there might well be competition between different groups within a community or nearby to land—it would not only be about communities of interest being in competition with the local community—

Alex Fergusson: It was the minister who said that, not me.

Claudia Beamish: I apologise. I wanted the proposed provision to be used at the discretion of the minister. In my view, the amendment would have given the minister the power to make a decision on that when there was an exceptional occurrence or circumstance. I tried to make the amendment as narrow as possible to make the point that communities of interest go beyond local communities.

Having received a reassurance from the minister, I seek to withdraw amendment 84. I am not sure at this stage whether I will think it appropriate to bring it back in a different form at stage 3, because that will depend on the discussions that I have with the minister in the interim.

Amendment 84, by agreement, withdrawn.

Section 42 agreed to.

Section 43 agreed to.

Section 44—Register of Land for Sustainable Development

12:00

The Convener: The next group is on the creation of a single register of applications to exercise rights to buy abandoned, neglected or detrimental land and to buy land to further sustainable development et cetera. Amendment 44, in the name of the minister, is grouped with amendments 45, 47, 48, 50 to 52, 64, 67, 70 and 71.

Aileen McLeod: Section 44 requires the keeper to set up and keep a register to be known as the register of land for sustainable development. The register has to contain information and documents about applications for the right to buy under part 5.

Section 74 of the Community Empowerment (Scotland) Act 2015 inserted section 97F into the Land Reform (Scotland) Act 2003. That new section requires the keeper to set up and keep a separate register containing information and documents about applications for the community right to buy abandoned, neglected or detrimental land.

In its stage 1 report, the RACCE Committee said:

> "It would seem sensible to ensure that one new register of community interest in land be created".

In our response, we agreed that

> "Amalgamating the two registers may prove to be more efficient"

and we said that we would give further consideration to that. Amendments 44, 45, 47, 48, 50 to 52, 64 and 67 now make provision for that. Those amendments will create a new register of applications by community bodies to buy land.

The duties on the keeper in respect of the register for the right to buy in part 3A of the 2003 act and in respect of the register that will be created in part 5 of the bill are very similar. Having one register that contains information and documents about both applications to exercise the community right to buy abandoned, neglected or detrimental land and applications under part 5 of the bill will be cheaper, simpler to administer and easier for community bodies to access. Registers

of Scotland is content with that; indeed, it wants that approach to be taken.

Amendment 44 amends section 44 so that the keeper is required to set up and keep a register to be known as the register of applications by community bodies to buy land. The register will contain information and documents relating to applications for the right to buy under part 5 of the bill. Amendments 45, 47, 48, 50 and 51 make consequential amendments to section 44.

Amendment 52 amends section 97F of the 2003 act, removing the requirement for a register of community interests in abandoned, neglected or detrimental land. That amendment requires the keeper to include a part in the register of applications by community bodies to buy land that contains information and documents about the applications for the community right to buy abandoned, neglected or detrimental land. The amendment also makes consequential amendments to section 97F of the 2003 act to reflect that change in amendments to the register. In addition, there is one minor amendment relating to the information to be included in the register that is created under part 5 of the bill.

Scottish Government amendments 70 and 71 insert a new schedule to the bill to make minor and consequential amendments to the 2003 act. Amendment 71 amends the date for the ballot return required for the community right to buy in part 2 of the 2003 act. The amendment provides that, where the date for the valuation to be provided is extended for longer than 12 weeks from the date of appointment of the valuer, the ballot return must be sent to the minister no later than the day after the date on which notification of the valuation is given.

Amendment 71 makes consequential amendments to the right to buy in part 3A of the 2003 act to take account of amendment 52.

Amendment 52 removes the register of community interests in abandoned, neglected or detrimental land, and it provides that the information that would have been included on that register is now included on the register of applications by community bodies to buy land, which is created under part 5 of the bill.

I move amendment 44.

Sarah Boyack: I very much welcome the new single register. One of the challenges is to enable communities to track through what is happening. If having one register makes it more straightforward and easier for communities to do that, that is all to the good. We will obviously wish to see how things work out in practice. Hopefully, the change will make things more straightforward all round.

Amendment 44 agreed to.

Amendment 45 moved—[Aileen McLeod]—and agreed to.

The Convener: Group 6 is minor amendments. Amendment 46, in the name of the minister, is grouped with amendments 49, 53, 55 to 59, 61 and 68.

Aileen McLeod: This is a group of minor Government amendments. Amendment 46 provides that, where an application has been made under part 5 by a part 5 community body—that is, a Scottish charitable incorporated organisation, or SCIO—the name of the part 5 body as well as its address must be included on the register of applications by community bodies to buy land.

Amendment 49 applies where a part 5 community body that is a body corporate with a written constitution has made an application under part 5 and then changes its address. The amendment requires the part 5 community body to notify the keeper of that change of address as soon as is reasonably practicable.

Amendment 53 provides that an application for a right to buy under part 5 of the bill must include or be accompanied by information about certain matters, details of which may be set out in regulations. One of those matters is

> “the reasons the Part 5 community body considers that its proposals for the land satisfy the sustainable development conditions set out in section 47(2)”.

Amendment 53 modifies section 45(6) to make clear that,

> “where the application is to buy a tenant’s interest,”

the information to be provided is about how the proposals for the land satisfy the sustainable development conditions

> “as modified specifically by section 47(5)(a)”

in relation to applications to buy a tenant’s interest. It is a minor and technical amendment for clarity.

Amendment 55 is a minor amendment to correct a cross-reference in section 46. It amends section 46(6) so that it correctly refers to the views and responses received in response to an application under section 45 rather than under section 46.

The effect of section 47(3)(f)(ii) is that the procedural requirements are not met if the landowner is

> “subject to any enforceable personal obligation ... to sell the land”

except for the obligation to sell the land to the part 5 community body that made the application to buy the land. Amendment 56 provides that there is also an exception to that requirement where the obligation on the landowner is to sell the land to

the third-party purchaser nominated by the part 5 community body.

Amendments 57, 58 and 59 are all minor. To comply with the procedural requirements under section 47, a community body must have submitted a written request to the landowner requesting the transfer of land, and the owner must not have responded or agreed to the request. Where the community body wishes to buy a tenant's interest, the community body is required to submit a written request to the tenant to buy the interest but, unlike the case of the request to the landowner, the tenant does not have to respond in order for an application to buy the tenant's interest to be made. Sections 47(8)(b) and 47(8)(c) allow ministers to make regulations about the responses to those requests in circumstances where owners and tenants are taken not to have responded or agreed to those requests. Amendments 57, 58 and 59 amend those provisions so that they apply only to responses by landowners.

Amendment 61 corrects a minor error in section 47(9). It amends the reference to subsection 42 so that it refers to section 42.

Amendment 68 moves section 65, which is an interpretation provision for part 5, to after section 43, where it sits better.

I move amendment 46.

Amendment 46 agreed to.

Amendments 47 to 51 moved—[Aileen McLeod]—and agreed to.

Section 44, as amended, agreed to.

After section 44

Amendment 52 moved—[Aileen McLeod]—and agreed to.

Section 45—Right to buy: application for consent

The Convener: Group 9 is on the right to buy under part 5 exercisable by third party purchaser. Amendment 85, in the name of Jim Hume, is the only amendment in the group.

Jim Hume: Amendment 85 seeks to delete section 45(1)(b), which says that

"a Part 5 community body"

can nominate

"in its application another person to exercise the right to buy"

and describes that person as

"a 'third party purchaser'".

Communities should always be in control. My concern is that a community might be put in a position in which it finds that it has sacrificed truly long-term, sustainable benefits—such as affordable housing—in exchange for, perhaps, a cash offer from a third party that might be too good to refuse. That could have unintended consequences.

Under part 5 of the bill, there is a danger that community projects could be driven by third party companies that have their own agendas. That is contrary to, and has the potential to dilute, the bill's central aim, which is for local communities always to be the drivers behind their own projects based on their own aspirations. Amendment 85 is intended to ensure that it is always communities that drive their right to buy rather than third parties, which might be large businesses. I am interested to hear the minister's comments on that.

I move amendment 85.

Sarah Boyack: Section 45(1)(b) is a useful innovation and it would be a great pity to remove it. I hear what Jim Hume says, but I have not been convinced that we should take the provision out of the bill.

The Convener: Discussions in the Highlands about areas that were once occupied by people might be the subject of the provision. The community might wish to try to extend the land that it has, perhaps in an area where there are no houses. The possibility that a body such as Community Land Scotland could be the third party might begin a debate about lands that were previously occupied by people and could be occupied in future. I agree with Sarah Boyack that the provision opens up an interesting area and that we might find means to use the third party provision. I do not believe that it allows the community to pass the right to buy to some sort of developer, so I will not support the amendment.

Aileen McLeod: I am grateful to Mr Hume for raising the issue, which gives us the opportunity to reflect further on the role of third parties in the right to buy under part 5. I also welcome the comments from Sarah Boyack and the convener.

The ability for a community body to nominate a third party purchaser—for example, a housing association or local business partner—to buy land under part 5 adds flexibility to the right to buy process. There has been strong support for the provisions from a number of stakeholders, such as Community Land Scotland, and the committee's stage 1 report acknowledged that, in certain circumstances, it may be beneficial for a community to be able to nominate a third party purchaser. Enabling communities to access the resources and expertise of other parties could help to deliver real benefits to the community that is at the heart of an application.

I understand that a small number of stakeholders have expressed concern that third party purchasers may exercise undue influence. In response to the committee's request in the stage 1 report for the Government to consider what safeguards were needed, we noted that, in considering a part 5 application, the Scottish ministers will have to be satisfied that sustainable development conditions are met and that procedural requirements are complied with.

That will include consideration of the community body and the third party purchaser's ability to deliver the proposals in their application. That may include scrutinising the arrangements between the community body and third party purchasers—for example, the legal agreement setting out delivery timescales, rights, liabilities and maintenance arrangements.

12:15

Ministers would not be able to consent to an application if they were not satisfied that the transfer to the third party purchaser would be likely to deliver significant benefit to the community and that the other sustainable development tests were met. Any concerns that were raised by a landowner or any other person that a third party purchaser was wielding undue influence, or any evidence that an arrangement between the community body and a third party purchaser would not deliver the significant benefits that would be necessary to meet the sustainable development conditions or even prevent harm to the community, would be considered very seriously by ministers in deciding whether to consent to an application.

The Scottish Government already supports organisations such as the community ownership support service to provide support and advice to communities on the issues of asset transfer and land ownership. That means that communities will have access to advice and support from an independent party when they are deciding whether to work with a third party on a right-to-buy application. In addition, we are happy to reassure Mr Hume that we will not allow part 5 to be used for reasons other than those for which it is intended. For those reasons, I ask Mr Hume to withdraw amendment 85.

Jim Hume: It has been important to thrash this out a bit and get the issues on the record, as there are concerns out there—as the minister correctly said—that part 5 may be used in certain circumstances. However, the minister has stated that an application will be given approval by ministers only if it passes sustainable development condition tests.

Unfortunately, as it currently appears in the bill, sustainability has not been fully explained or defined. I encourage local communities to work with housing associations to provide affordable housing in their areas. We do not want to prevent housing associations from being part of community developments. With that in mind, I reserve the right to lodge another amendment at stage 3 and I seek the committee's agreement to withdraw amendment 85.

Amendment 85, by agreement, withdrawn.

Amendment 53 moved—[Aileen McLeod]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Right to buy: application procedure

The Convener: Group 10 is on consideration of the effect of the exercise of a right to buy on the owner or occupier of the land. Amendment 54, in the name of the minister, is grouped with amendments 87, 88 and 60.

Aileen McLeod: When an application is made under part 5, ministers are required to invite the owner or the tenant to give them information about certain matters. Amendment 54 requires ministers to invite the owner of the land or the tenant to provide them with information about the likely impact on their interests of the proposals in the application. That includes information about the impact of the application on the current use of the land, the tenant's interests or any intended use. Amendment 54 works in tandem with amendment 60, which would require ministers to take account of any such information provided by the landowner or tenant in considering whether the transfer of land or the tenant's interest was in the public interest.

I appreciate the concerns behind amendment 87, but I have some difficulties with it. In some circumstances, it could create a significant restriction to the right to buy that I do not consider to be appropriate. Any application to buy land under part 5, including an application to buy agricultural land, could be consented to by ministers only if all the sustainable development conditions were met and the procedural requirements were complied with. That means that the transfer of land would have to satisfy the sustainable development conditions, including that the transfer was in the public interest, that the transfer of land would likely result in significant benefit to the community, that it was the only practicable way of achieving significant benefit for the community and that not granting the transfer would likely result in significant harm to the community. Those are strong tests.

It is legitimate that agricultural land should not be excluded from a part 5 application when a transfer is needed to prevent significant harm to

the community, to provide significant benefits when there are no practical alternatives and it is in the public interest. There may also be circumstances in which, for example, buying a small piece of agricultural land could result in significant benefits to the community but have limited impact on the landowner. Therefore, the test allows for all relevant factors to be considered.

Amendment 60 requires that, in considering whether the transfer of land or assignment of a tenant's interest is in the public interest, ministers must take into account any information that is provided by landowners or tenants on how a part 5 application would affect their interests. It also requires that when they consider whether the transfer of land or assignment of a tenant's interest is in the public interest, Scottish ministers must consider the likely effect on land use in Scotland of granting or not granting consent to the transfer. Amendment 60 therefore addresses concerns about agricultural land that were raised by some of our stakeholders, and it confirms the Scottish Government's commitment to a flourishing and vibrant tenanted sector.

Given those reassurances and the points that I have made about not unduly restricting the community's right to buy for sustainable development, I ask Mr Russell to withdraw his amendment. I am happy to go on the record as saying that we will always take account of the effect on agriculture of any community buyout in considering a part 5 application, where relevant.

I appreciate the good intentions behind amendment 88 although, with due respect, I am unable to support it. Ministers cannot consent to an application under part 5 unless they are satisfied that the transfer of land or assignment of the tenant's interest would be in the public interest. I am happy to go on the record as saying that that will involve consideration of the impact of the transfer or assignment on the landowner or tenant.

To make that clear in the bill, amendment 60 requires that, in considering whether the transfer of land or assignment of the tenant's interest is in the public interest, ministers must take into account any information that is provided by landowners or tenants on how a part 5 application would affect those interests. It also means that, when they are considering whether the transfer of land, or the assignment of the tenant's interest is in the public interest, Scottish ministers will be obliged to consider the likely effect of granting or not granting consent to the transfer of land or the tenant's interest on land use in Scotland. It is useful to remember that the Scottish ministers could not consent to an application under part 5 if to do so would be incompatible with any person's rights under the European convention on human rights.

I have already discussed amendment 60 in relation to amendment 54, Mr Russell's amendment 87 and Mr Fergusson's amendment 88. It requires that, in considering whether the transfer of land or assignment of the tenant's interest is in the public interest, Scottish ministers must take into account any information that is provided by landowners or tenants on how a part 5 application would affect their interests. As I said, amendment 60 also required that, when they are considering whether that transfer of land or assignment of a tenant's interests is in the public interest, ministers must consider the likely effect on land use in Scotland of granting or not granting consent to the transfer.

Amendment 54 addresses concerns that some stakeholders and committee members raised about agricultural land. I reiterate that it confirms Scottish ministers' commitment to a flourishing and vibrant tenanting sector.

I move amendment 54.

Michael Russell: I was reassured by the minister's amendment 60, which has the same effect as amendment 87. It would be useful to have a specific reference to "agricultural land", but I can appreciate the difficulty of so doing.

The issue is not just agricultural land, but agricultural units. It is important that reassurance is given to those people who fear that they will lose an essential part of a viable agricultural unit. I am not in any way trying to remove the purchase of agricultural land from the prospect of community purchase—to do so would be unreasonable and it is not something that one would want to see. However, we should not only reassure the agricultural sector but indicate its importance. We should say that there is an understanding in the bill and in Government that agricultural units must be protected from unreasonable activity.

I presume that I will address amendments 86 and 86A later.

The Convener: Yes.

Michael Russell: They also deal with some of the issues from the perspective of people who are trying to earn a living in the countryside and who do not want that to be disrupted, and who have excellent relationships with the community—indeed, they are a part of the community.

Amendment 87 does not address issues of large-scale estate management. It addresses issues of people who work in the countryside in the long term and who have an interest in being there. We do not want them to be accidental casualties of the legislation. Amendment 60 is important and I think that it will have the desired effect. It will be useful to see what the agricultural sector thinks of it. At the moment I am willing to

not move amendment 87 but, if the agricultural sector thinks that further strengthening is required, we can look at that at stage 3.

Alex Fergusson: On amendment 88, I echo Michael Russell's comments. I have no problems with the minister's amendments 54 and 60, but I believe that the group is strengthened by the addition of amendments 87 and 88.

A reasonable balance does not seem to have been struck when transfer of land is considered in terms of significant benefit or harm to the community without equal consideration being given to any significant harm to the owner, previous owner or likely previous owner of the land. Amendment 88 would make such consideration a key test. Although I accept entirely that such consideration is partly included in amendment 87, which seeks to protect farmland, amendment 88 would give similar recognition to other rural land uses, such as forestry, heritage tourism, outdoor recreation et cetera.

I reiterate the point that Michael Russell made. The minister has mentioned the effect on land use and agriculture in Scotland. However, the issue is not Scotland wide; it is about the impact on a particular unit, be it a farm or another form of rural business. It is important to recognise that.

I am reminded of the committee's visit to an example of community ownership—I think that it was in Fife.

Graeme Dey: It was Kinghorn.

Alex Fergusson: Thank you. Kinghorn in Fife is a splendid example of community engagement, community empowerment and community benefit. The people involved were keen to purchase ground off a neighbouring farm and we were told that it was extremely difficult to engage with the farmer. It transpired that the individual was more than happy to engage, but he was not happy to give up the land in question because it amounted to approximately 50 per cent of his farm.

When we were in Dumfries, I questioned the minister on what would happen in a 50:50 situation. I believe that the Kinghorn situation might well be such a situation because, if the community was to make an application under the proposed legislation, it might well meet the tests that have been laid down, but the landowner would have an equally strong case to make against it. From the answer that the minister gave in Dumfries, it is quite clear that, in a 50:50 situation, the community application would be favoured. Therefore amendment 87 in Mike Russell's name and amendment 88 in my name, provide the additional protection that is required. I am disappointed that the minister cannot see a way to accept the amendments or to have further discussions before stage 3 to see what extra protection could be given.

I will listen to what the minister says in winding up and will decide at that point whether to move amendment 88.

12:30

Aileen McLeod: I reassure Mr Fergusson that the impact on the landowner will be relevant in the public interest test, which works differently from the test in section 47(2)(d) as it is not softened by reference to "likelihood". Ministers will need to be satisfied that the transfer would not result in significant harm to the owner or tenant. To make that work, ministers would be able to require—not just request—information from landowners and others about the potential harm to the landowner or tenant.

On Mr Russell's points, I reassure members that specifying consideration of the impact on the landowner and tenant will include consideration of the impact on an agricultural unit where relevant. I reiterate that amendment 60 ensures that, when the landowner or tenant is an agricultural business, or the land that is subject to the part 5 application is agricultural land, any potential impact on the landowner or tenant or the effect of any potential change in the use of the land will be considered.

Amendment 54 agreed to.

Amendment 55 moved—[Aileen McLeod]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Right to buy: Ministers' decision on application

The Convener: Group 11 is on the period within which further application to buy the same land under part 5 may not be made. Amendment 86, in the name of Michael Russell, is grouped with amendment 86A.

Michael Russell: Amendment 86 is intended as a probing amendment. Concern has been expressed that applications can simply enter into a rolling cycle; indeed, I know of a few such cases. The failure of a community to succeed in an application—even under previous legislation—would simply mean that they would return to it at a later date. No harm in that, you would think, but some people would be significantly harmed by that, particularly those with land that might, for a long period, be sterilised by the process.

I am interested to hear the Government's views on the matter. There is precedent—in a rather different way—in the schools closure legislation, in that a local authority cannot return to a school

closure proposal within five years if its argument fails to be successful in the first place. What is the Government's view on this, and what protection can be given in those unusual circumstances where harm might be done by a repeated application? After all, this will be very much up to the judgment of ministers.

Amendment 86A, in the name of Sarah Boyack, certainly improves the wording of my own amendment. I do not think that I will be pressing amendment 86 if I know that the Government is aware of an issue here that requires consideration, but Sarah Boyack is probably right to say that the issue relates to cases in which an application has been "refused consent" instead of no application having been made.

I move amendment 86.

Sarah Boyack: I understand why Mike Russell wants to test the issue, but when I read his amendment, I wanted to ensure that it did not create any additional problems.

Amendment 86A in my name aims to ensure that we do not get the unintended consequence of preventing any submission of an application from community groups, for example, when an application has been withdrawn at an early stage of the process for what might be legitimate and technical reasons. I seek to amend Mike Russell's amendment because of the experience under our previous right-to-buy legislation, and I want to ensure that we get the nuts and bolts right. I am certainly interested in hearing the minister's response.

I move amendment 86A.

Aileen McLeod: I appreciate the intentions behind Michael Russell's amendment 86 and Sarah Boyack's amendment 86A, which seeks to amend it. I absolutely accept that the possibility of repeated right-to-buy applications could be of concern to some people, so I reassure the committee that the Scottish Government will closely monitor part 5 applications to make sure that the system is not abused in any way. However, I must point out that there seems to be no evidence of existing right-to-buy powers leading to vexatious applications or of the system being abused.

We cannot foresee what circumstances might arise in future. There might be occasions when it would be useful to be able to consider an application within the five-year timeframe that Michael Russell and Sarah Boyack have suggested. In some situations, a requirement to wait a further five years could lead to communities suffering significant harm. The proposed provision could also be abused as a way of preventing communities from applying within the five-year period. For example, there are rare cases in which a landlord might encourage a poor buyout application with a view to preventing further applications. In addition, a first application might well prove to be a learning experience for some communities, and it would be wrong to bar them from having another opportunity to make an application within a five-year period.

Given the points that I have made and my reassurance that the Government will monitor part 5 applications, I ask Michael Russell and Sarah Boyack to withdraw their amendments.

The Convener: Before we get to that point, Mike Russell has to wind up on amendment 86, after which Sarah Boyack will wind up on amendment 86A.

Michael Russell: I am constantly in awe of the Government's ability to give reasons for refusing amendments, but I think that the idea that a landowner might encourage a poor buyout application in the hope of sterilising the issue for ever is at the far end of that spectrum. That said, I understand that the issue has been tested.

There are circumstances—I can certainly think of one—in which this is an issue, but the assurance that the minister has provided on the record that applications will be scrutinised and studied in that light is helpful. I hope that if there was evidence of any malpractice, including the manufacturing of poor applications in order to prevent good ones from being made, action would be taken on the matter.

The Convener: I invite Sarah Boyack to wind up on amendment 86A and to say whether she intends to press or withdraw it.

Sarah Boyack: On the basis that Michael Russell is seeking to withdraw amendment 86, I will seek to withdraw amendment 86A.

Amendment 86A, by agreement, withdrawn.

Amendment 86, by agreement, withdrawn.

Amendment 87 not moved.

The Convener: Group 12 is on sustainable development conditions et cetera, including factors to be taken into account in determining significant benefit or harm. Amendment 6, in my name, is grouped with amendments 109, 89, 111, 112, 63, 62, 91 and 92.

Much of the strength of the argument for the ability of communities and tenants to buy is underlined by the increasing reliance on human rights in the process. As we have gone through the bill, we have cited many useful aspects of human rights that we hope the Government will make use of but, in the stage 1 debate, it seemed to us that there were areas in which the present criteria for the community right to buy as set out in section 47 are so demanding that they might result

in communities' applications being unsuccessful. Consequently, the provision might not achieve the desired diversification of land ownership.

In this group of amendments, members suggest a number of ways of tackling that issue. I, for example, am tackling only one small part in suggesting that section 47(2)(c)(ii), which talks about the transfer of land being

"the only practicable way of achieving"

a benefit be changed to "the only practicable, or the most practicable, way of achieving". That would allow the ministers to underline the fact that the human rights that lie behind the issue and the potential community rights would not be impeded by the phrase "the only practicable way".

I therefore urge the minister to accept the phrase "the only practicable, or the most practicable, way". I leave other members to speak to different amendments in the group.

I move amendment 6.

Dave Thompson: Amendment 109 seeks to provide marginal additional flexibility to the community and the minister in relation to the right to buy. It still leaves considerable protection for the owner of the land and retains a high challenge to the community to demonstrate that, without the transfer of the land, it is likely that its sustainable development objectives will be harmed. Those objectives would, of course, have to be regarded as providing such significant benefits as to overtake the owner's interests in retaining ownership.

I look forward to hearing the minister's comments on the matter.

Michael Russell: My two amendments in the group seek to address the question of human rights and definitions. Amendment 89 ensures that the International Covenant on Economic, Social and Cultural Rights is applied in the right to buy.

Amendment 92 seeks to amend a list. The bill contains several lists setting out a number of issues, and I have sought to insert into all of them two more elements:

"the realisation of human rights"

and

"furthering and giving effect to equal opportunities".

To be fair, they occur in some of the lists; however, they do not occur in others, and a bit of consistency between the lists would be helpful.

My view, which has been supported by the committee and, previously, by the minister—I am aye hopin, as they say, that she will support it on this occasion—is that, whenever possible, we should insert into the bill the concepts of human rights and equal opportunities and ensure that the understanding of human rights is well defined. It should be not exclusively defined so that other things are prevented from coming into it but defined according to the key documents. That is an obligation on the Parliament; after all, it has an obligation to consider the matter widely with regard to international agreements and international best practice.

Amendments 89 and 92 would allow us to observe international best practice. We will see the cumulative effect of that over the years as human rights are integrated into everything that we do, which can be only beneficial.

Claudia Beamish: I am keen to include health inequalities in the matters that ministers must take into account when they consider the likely effect of granting or not granting the transfer of land. To that end, I have lodged amendment 63.

I note that the written submission from NHS Health Scotland, whose role is

"to work with others to put into action knowledge about what works, and does not work, to reduce health inequalities and improve health",

states that

"inequalities may be created and/or maintained within a community, if the proposed development of the land benefits and/or excludes a particular population group."

On that basis, I ask the minister and the committee to consider health inequalities as one of the issues that should be taken into account in determining whether an application will lead to significant benefit or harm.

12:45

In a similar vein, amendment 62 proposes adding to the list of things to be considered the nine protected characteristics in the Equality Act 2010. It would require ministers to look at gender, age and a range of other characteristics that I will not list now; I think that the two that I have mentioned are particularly important, but others would be socioeconomic issues and disadvantage.

In speaking to amendment 91, I must declare an interest as a member of the Co-operative parliamentary group and the Scottish Co-operative Party. I would like the phrase "cooperative development" to be added to the list in section 47. I will not go into any detail, but, as we know, co-operatives rely on the principles of solidarity, mutuality, transparency and benefit to communities and local economies that lie at the heart of the bill. They are owned by their members and provide a strong model for community engagement that chimes with the community empowerment that is envisaged in the bill.

I support Mike Russell's amendment 89. As both Sarah Boyack and Mike Russell have made the case for having regard to the International Covenant on Economic, Social and Cultural Rights, I am not going to cover the point again, but I will say that Sarah Boyack and I think it essential that, as the amendment states,

"In considering an application to buy land under section 45, the Scottish Ministers must have regard to the International Covenant on Economic, Social and Cultural Rights".

I also support Rob Gibson's amendment 6 and Dave Thompson's amendment 111.

Aileen McLeod: I am content to support amendment 6 if the committee is minded to approve it, but I should point out that in practice its effect would be minimal. In deciding whether to consent to an application under part 5, ministers must act in a way that is compatible with the European convention on human rights. Therefore, even if the sustainable development conditions are met and the procedural requirements are complied with in respect of an application, ministers cannot consent to that application if to do so would be incompatible with any person's rights under article 1 of protocol 1 to the European convention on human rights.

One of the tests of compatibility with article 1 of protocol 1 is whether the transfer of land would be the least intrusive way of achieving the benefits to the community regarding the landowner's rights under that article. If amendment 6 is agreed to, ministers will be able to consent to an application on the basis that it is "the most practicable" way of achieving the desired benefits rather than "the only practicable way", only if they are satisfied that the transfer of land is the least intrusive means of achieving those benefits with regard to the landowner's rights under article 1 of protocol 1. In theory, there might be circumstances in which ministers can consent to an application to transfer land when such a transfer is the most though not the only practicable way of achieving the desired benefits, but I have not yet identified any such circumstances. Nevertheless, we are happy to support amendment 6.

Although amendment 112 is not immediately next to amendments 109 and 111 on the marshalled list, it is consequential on amendment 109, so I propose to speak to all three amendments together.

I welcome amendments 109, 111 and 112 in the name of Dave Thompson, which seek to ensure that the tests and processes for an application for the right to buy land to further sustainable development are as effective as possible. I appreciate that there might be some concern that the sustainable development conditions, particularly the requirement under section 47(2)(d) to show that

"not granting consent to the transfer of land is likely to result in significant harm to"

a community, might be difficult to meet. However, where provisions provide for land to be transferred against the landowner's wishes, it is fair to have high thresholds to ensure that it is the right thing to do.

As a result of the amendments, ministers will be able to consent to an application in circumstances where the conditions in 47(2)(a) to (c) were met as at present, but where not transferring the land would be likely to result in significant harm not to the community itself but to the community's sustainable development objectives. As amendment 109 does not define what is meant by the community's "sustainable development objectives", it is not certain how we can assess whether transferring the land would be likely to result in significant harm to them. In addition, if such objectives are not publicly available, a landowner might not even be aware of them.

One aspect of the test of a provision's compatibility with article 1 of protocol 1 to the ECHR is that its effect is sufficiently clear and certain. Given the lack of clarity or certainty as to the meaning of amendment 109, the Government is concerned that accepting it would mean that the sustainable development conditions would become too uncertain to meet the requirements of article 1 of protocol 1. Consequently, I am not persuaded that amendment 109, as currently drafted, falls within the Parliament's legislative competence and, as a result, I cannot support it.

That said, I recognise the concerns that Dave Thompson and stakeholders have expressed about whether that element of the test sets too high a hurdle for communities while at the same time wanting to provide communities with appropriate clarity about the tests that need to be satisfied before ministers can consent to an application under part 5. Should Dave Thompson be willing not to move amendments 109, 111 and 112, I would welcome the opportunity to meet him to discuss the issue further with a view to returning with a Government amendment at stage 3. We need to consider the issue carefully to see whether there are other ways in which that part of the test can be adjusted to ensure that it is fit for purpose and respects the needs and rights of both communities and landowners. I therefore ask Dave Thompson not to move amendments 109, 111 and 112.

As you know, convener, the Government is committed to giving effect to international human rights treaties in a way that works for Scotland. The International Covenant on Economic, Social

and Cultural Rights is an international human rights treaty that sets out certain rights that state parties agree to recognise as well as aspirations to work towards. The creation of the part 5 right to buy, which allows communities to buy land in order to create significant benefits for it and to avoid significant harm, can be regarded as a step in assisting with ministers' obligations under the covenant.

Amendment 89 would place responsibility for testing and directing Scotland's approach to the international covenant at the door of the courts; however, the covenant does not easily translate into clear, enforceable rights and its terms have not been drafted in a way that lends itself to interpretation by the courts. Nevertheless, as I agree with the sentiments behind Mike Russell's amendment 89, I am very happy to accept it on the grounds that the Government will, ahead of stage 3, consider the matter further to ensure that the best possible wording is used to give effect to the intentions behind the proposed amendment.

Although I appreciate the sentiment behind Mr Russell's amendment 92, I am uncertain whether its wording provides sufficient clarity or will have the desired effect. I am not convinced that section 47(10) is the right place in which to insert the references to "equal opportunities" and

"the realisation of human rights",

especially in light of the acceptance of amendment 89, which makes reference to human rights elsewhere in the test set out in section 47.

The fact is that ministers cannot consent to an application under part 5 unless they are satisfied that the transfer of land would be likely to result in significant benefit to the community and that failure to transfer the land would be likely to result in significant harm to the community. The creation of the part 5 right to allow a community to buy land to create significant benefit to the community and avoid significant harm could in itself be considered as evidence of Scotland's commitment to take economic, social and cultural rights into consideration. I reiterate that, unlike their UK counterparts, Scottish ministers already have explicit duties under the Scottish ministerial code to comply with international law, including international treaties, and human rights instruments such as the international covenant. Human rights are inevitably intertwined with the factors that are already listed in section 47(10) such as social wellbeing and public health.

I am happy to support in principle Michael Russell's amendment 92 and I hope that, in doing so, I satisfy some of Claudia Beamish's concerns about equal opportunities. However, the Scottish Government will have to consider the issue further to ensure that the amendment still provides the test that is set out in section 47 with the sufficient clear meaning that is required to ensure that it is effective and within competence. It might be necessary to lodge an amendment at stage 3 to alter the wording of amendment 92 to provide the necessary clarity or to remove it altogether if an effective solution cannot be found. I am happy to meet both Michael Russell and Claudia Beamish to discuss the issue of human rights and equalities in part 5. We also need to get some clarity and an overview on what has been agreed on the human rights provisions in the bill.

I appreciate the intention that lies behind amendments 62 and 63, which are similar to Michael Russell's amendment 92. In my comments on amendment 92, I expanded on the consideration of human rights, and I will now offer some thoughts on equal opportunities in relation to these amendments.

Health inequalities are inevitably intertwined with the factors that are already listed in section 47(10) such as social wellbeing and public health. In addition, ministers cannot consent to an application under part 5 unless they are satisfied that the transfer of land is in the public interest. If the transfer of land will be detrimental to the furtherance of equal opportunities, including the protected characteristics under section 4 of the Equality Act 2010, that will be a relevant factor for ministers to consider. Ministers already have important statutory duties under the 2010 act to

"advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not"

and to reduce socioeconomic inequalities in outcomes.

Section 47(10) already requires Scottish ministers to consider the impact of an application on the lives of people in the community with reference to

"economic development ... regeneration ... public health ... social wellbeing, and ... environmental wellbeing"

when considering what constitutes harm or benefit to the community that is seeking to buy land. For example, if a community in an economically deprived area with poor health outcomes made an application that showed how a part 5 buyout would significantly improve its economic position or health outcomes, the application would be considered under the economic development and public health considerations in section 47(10). Given my commitment to accept in principle amendment 92 and to consider the issue further, I ask Claudia Beamish not to move amendments 62 and 63.

I thank Claudia Beamish for lodging amendment 91, to which the considerations that apply are similar to those that apply to amendments 92, 62

and 63. Any inclusion of the term “cooperative development” for the purposes of section 47(10) would require it to be defined in the bill. Its inclusion is unnecessary to the extent that, if it can be shown that “cooperative development” can positively and significantly improve the outcomes for the people in a community with reference to

“economic development ... regeneration ... public health ... social wellbeing, and ... environmental wellbeing”,

that will certainly be a consideration for ministers. Therefore, although I agree with the sentiment behind amendment 91, I think that it is unnecessary and its effect unclear. I therefore cannot support it.

13:00

The Convener: I intend to press amendment 6. I am glad that we have got the Government to think more about the fairness of the tests with regard to the community right to buy and so on, and I recognise the need to act proportionately in order to ensure that A1P1 is met. However, I must also acknowledge the strong public interest in diversifying land in Scotland, and I ask ministers to ensure that, in all their dealings, they bear that in mind as the reason why we have invoked the human rights clauses that we have been debating in relation to section 47.

Amendment 6 agreed to.

The Convener: Amendment 109, in the name of Dave Thompson, has already been debated with amendment 6.

Dave Thompson: In light of the minister’s assurances, I will not move the amendment, and I look forward to meeting her to discuss matters.

Amendment 109 not moved.

The Convener: Amendment 88, in the name of Alex Fergusson, has already been debated with amendment 54.

Alex Fergusson: Given the minister’s comments, I will not move the amendment, with the proviso that I might lodge it again at stage 3.

Amendment 88 not moved.

The Convener: We move on to actions by the owner to prevent the sale of land. Amendment 110, in the name of Dave Thompson, is in a group on its own

Dave Thompson: Amendment 110 is designed to close a potential loophole that an owner could use to circumvent the community right-to-buy provisions. It seeks to clarify that the provision would apply unless it could be shown that the owner was prevented from selling only by virtue of something done deliberately by the owner with the aim of defeating the application. That would be difficult to show, but the amendment at least provides for the case to be made if the circumstances warranted it. It is important to close that loophole.

If the amendment is not of itself sufficient, I encourage the minister to return to the matter at stage 3 with a better option. Otherwise, I hope that the minister will be able to accept the amendment, and I look forward to her comments on it.

I move amendment 110.

Aileen McLeod: Community rights to buy, especially the right to buy land to further sustainable development under part 5, are novel, ground-breaking provisions and it is possible that issues might arise as the provisions begin to be used in practice and we learn from experience. I greatly welcome amendment 110, and I thank Dave Thompson for bringing this potential loophole to our attention. I acknowledge that there is a need to consider further whether the provisions in section 47(3)(f) could be used by an owner to avoid an application under part 5.

However, although I am sympathetic to its aim, amendment 110 as currently drafted contains a number of potential flaws. First, it considers only efforts to use section 47(3)(f)(i) to avoid consent being given to a part 5 application and does not address the potential use of personal obligations under section 47(3)(f)(ii) to achieve the same aim. I understand that stakeholders have also indicated concerns over the potential use and impact of options agreements, which potentially fall under section 47(3)(f)(ii) rather than under section 47(3)(f)(i). Secondly, it is difficult to see how a community body could prove that something had been done by the landowner with the deliberate aim of defeating an application.

Obviously there might be significant legal issues that we need to work through, and removing the application of section 47(3)(f) would mean that a person prevented from transferring land would be forced to do so or would be forced to act in breach of an enforceable personal obligation to sell the land. The question whether an appropriate mechanism that was compatible with a person’s ECHR rights could be developed to deal with that would need careful consideration, and we would also want to consider whether this was an issue for other rights to buy.

I therefore ask Dave Thompson to withdraw amendment 110. I would welcome the opportunity to work on the issue with Dave Thompson, the committee and stakeholders ahead of stage 3 to see whether it was possible to identify the problem and find an effective solution to the loophole that Dave Thompson has quite rightly highlighted.

The Convener: I call Dave Thompson to wind up and indicate whether he wishes to press or withdraw amendment 110.

Dave Thompson: In light of the minister's comments, convener, I would like to withdraw amendment 110.

Amendment 110, by agreement, withdrawn.

Amendment 56 moved—[Aileen McLeod]—and agreed to.

Amendment 89 moved—[Michael Russell]—and agreed to.

The Convener: I am minded to take the very shortest of comfort breaks, after which we will try to fit in as much as we can before half past 1. For anyone who requires a comfort break, this is your four-minute warning.

13:06

Meeting suspended.

13:09

On resuming—

Amendments 57 to 61 moved—[Aileen McLeod]—and agreed to.

Amendments 90, 111 and 112 not moved.

The Convener: Amendments 63 and 62, in the name of Claudia Beamish, were debated with amendment 6. I call Claudia Beamish to move or not move the amendments.

Claudia Beamish: In view of the minister's comments about having a discussion with me and Michael Russell, I do not intend to move amendments 63 and 62.

Amendments 63 and 62 not moved.

The Convener: Amendment 91, in the name of Claudia Beamish, was debated with amendment 6. I call Claudia Beamish to move or not move the amendment.

Claudia Beamish: I will not move amendment 91, for a different reason: because of the minister's assurance that co-operative development is an important part of the way forward for Scotland.

Amendment 91 not moved.

Amendment 92 moved—[Michael Russell]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Ballot to indicate approval for purposes of section 47

Amendment 93 not moved.

Section 48 agreed to.

Sections 49 to 51 agreed to.

Section 52—Effect of Ministers' decision on right to buy

Amendment 64 moved—[Aileen McLeod]—and agreed to.

Section 52, as amended, agreed to.

Sections 53 to 57 agreed to.

Section 58—Compensation

The Convener: Group 14 is on the exercise of the right to buy under part 5: compensation. Amendment 65, in the name of the minister, is grouped with amendments 66 and 113.

Aileen McLeod: Amendments 65 and 66 modify section 58, which concerns compensation when an application has been made under part 5, to create a fairer balance in the payment of compensation. They ensure that, when an application nominates a third-party purchaser and the application is approved by ministers, it is the third-party purchaser, rather than a community body, that is liable to pay compensation for losses or expenses that a person incurs in complying with the requirements of part 5.

I turn to amendment 113. The compensation provisions that are set out in section 58 match the compensation provisions for the right to buy abandoned, neglected and detrimental land in section 97T of part 3A of the Land Reform (Scotland) Act 2003. When an application under part 5 of the bill has not been refused by the Scottish ministers, compensation can be claimed in any circumstances that are set out in section 58(1) and section 58(2). When a part 5 application has been refused by the Scottish ministers, compensation is payable only to owners or tenants of the land that was subject to the part 5 application. Alex Fergusson's amendment 113 would not change that.

At present, the obligation under section 58(4) is only to the owners or tenants of land that is subject to the part 5 application, in the recognition that such persons would be likely to have incurred loss or expenses in the application process up to the date of the minister's decision to refuse the application. It is not considered that other persons would have incurred significant loss or expenses in those circumstances should they have chosen to engage in the application process.

13:15

I am happy to confirm on the record that the entitlement to compensation under sections 58(1) and 58(2), when the Scottish ministers have not

refused a part 5 application, extends to owners or former owners of land that is adjacent to the land that is subject to the part 5 application when the other conditions for entitlement to compensation are met. However, as subsections (1) and (2) clearly state, any person can be entitled to compensation when the conditions that are set out are met. There is no need for further clarification, and Mr Fergusson's amendment 113 would have no practical effect. Given that, I ask whether he would be willing not to move it.

I move amendment 65.

Alex Fergusson: My amendment 113 would ensure that any financial impact of a failed part 5 application on the owner of land that is adjacent to the land in question was considered when compensation is applicable. It seeks to provide a degree of fairness in a possible situation—I entirely agree that it is only a possible situation; I think that there would be very few of them—whereby a part 5 application founders and the owner of the land that was subject to the application is compensated for associated case costs, but the owner of adjacent land, who might also have incurred such costs, is not. As the minister said about another part of the bill, it is a question of fairness.

I accept that the purpose of lodging the amendment was purely to probe. If I have picked up rightly what the minister said, which I think I have, the issue that I have raised is largely covered by the bill, so I will not move the amendment.

Aileen McLeod: I thank Mr Fergusson for not moving his amendment.

Amendment 65 agreed to.

Amendment 66 moved—[Aileen McLeod]—and agreed to.

Alex Fergusson: I will not move amendment 113 in the hope that I understood the minister correctly.

Amendment 113 not moved.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—Appeals to sheriff

Amendment 67 moved—[Aileen McLeod]—and agreed to.

Section 60, as amended, agreed to.

Sections 61 to 64 agreed to.

After section 64

The Convener: The next group is on reversion of land bought under part 5. Amendment 114, in the name of Alex Fergusson, is grouped with amendment 118.

Alex Fergusson: Amendments 114 and 118 are intended to address a recommendation in the committee's stage 1 report that the bill should be amended to require applications to be reconsidered, post approval, when the original purpose has not been fulfilled or there has been a radical departure from the original purpose. I believe that that would apply in only a very few cases.

I ask members to note in particular that amendment 114 does not simply suggest that the ownership should revert to the previous owner. It is specifically worded to ensure that, following any such reversion, the stated objectives that were approved in the application as being in the public interest are delivered.

If land is acquired to further sustainable development, but after a suitable time is not deemed to be doing so, it surely makes sense to take steps to ensure that sustainable development is put back on track. Amendment 114 therefore simply sets out that a former owner could apply for the reversion of land and that the Scottish ministers could consent only if strict conditions were met, one of which is that at least three years must have elapsed since consent was given to the application, during which time no work towards the stated aims must have taken place.

Community Land Scotland seems to have taken particular umbrage at amendment 114, which it said

"seeks, in effect, to establish within a Bill designed to extend community rights to buy land, a private interest right to buy community owned land, giving a presumption in favour of a particular party".

I contend that it would do no such thing. Amendment 114 seeks to ensure that the original objectives of the transfer are delivered. It seems strange that Community Land Scotland would object to there being some form of accountability in a transaction that ministers have previously concluded is very much in the public interest.

Community Land Scotland suggested that ECHR considerations could come into play, as the community would be being deprived of the

"right to enjoy their property",

and it said that

"the proposal would be neither justified nor proportionate as a response to any concerns of a single private party."

To that criticism, I simply say that it is not the concerns of any private party that would be engaged in this context; the provision would kick in only—I stress "only"—when the community had failed to deliver the sustainable development that

three years previously had been deemed to be in the community's interest.

In the interests of time, I will say no more at this stage other than that—to paraphrase a previously oft-used phrase in the debate—good community landowners need have absolutely nothing to fear from amendment 114. [*Laughter.*]

I move amendment 114.

The Convener: If no member wants to comment—I think that they have commented—I bring in the minister.

Aileen McLeod: Although I welcome Mr Fergusson's engagement on part 5 and his efforts to ensure a fair and effective process, I do not agree with the intentions behind amendment 114. There are strong reasons for giving powers to buy land, in specific circumstances, to community bodies that are accountable to their communities, but there is no precedent for giving unaccountable private persons a right to buy land, which is what the provisions would amount to.

When a right-to-buy application under part 5 has been approved and the land transferred, the former landowner no longer has any rights to the land and will have been compensated for the loss of the land. To provide for the reversion of the land to its former owner, without providing for repayment of any of the value that was received at the time of the transfer and without compensating the community body for the loss of ownership of the land, could create a significant windfall for the landowner.

The evidence to date is that, in general, community ownership tends to succeed in delivering better outcomes for communities. There does not appear to be a body of evidence to support the argument for a provision to take land back from communities.

In addition to my concern about the objectives of amendment 114, there are a number of practical issues, which the amendment does not address. The amendment also relies on a broad regulation-making power. If it comes to a vote, I urge the committee to reject amendment 114.

Michael Russell: I understand where Alex Fergusson is coming from, but to apply a standard to community ownership that requires the community to demonstrate within a very short period that all its ambitions have been fulfilled and that everything is going splendidly well would be a little unfortunate. If we were to apply such a standard to private estates in Scotland, we would be taking huge swathes of them into public ownership and removing them from their owners. Amendment 114 cannot be supported.

Sarah Boyack: I agree. Amendment 114 would take us backwards, rather than forwards. It would undermine the implementation of the bill. Communities will work hard to make the best use of land if they are successful in going through the process. If communities constantly have to look over their shoulders to see whether there will be a challenge, community relationships will not be helped in areas where the community is pursuing a right to buy.

Alex Fergusson: I think that my committee colleagues are misreading the intentions of amendment 114. There is no intention that it should apply when not all the sustainable development aims have been achieved over the three-year period. As I said, it would apply only when no action whatsoever had been taken and the application had in effect foundered.

I find it sad that we could be encouraging a situation where, if a perfectly good application was agreed to but foundered—if it went wrong and nothing happened—for reasons that are outwith a community's control, we would end up with land that did not have a useful purpose. That needs to be corrected—and the committee recommended that that should be considered—so I intend to press my amendment.

The Convener: The question is, that amendment 114 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 114 disagreed to.

Section 65—Interpretation of Part 5

Section 65 agreed to.

Amendment 68 moved—[Aileen McLeod]—and agreed to.

After section 65

The Convener: If we keep this next section short, we could deal with it in the next four or five minutes. That would be very helpful, because people have commitments after this meeting. Since he has been very patient, I will call Patrick Harvie.

Amendment 115, in the name of Patrick Harvie, is grouped with amendment 127.

Patrick Harvie (Glasgow) (Green): Thank you very much, convener. It is nice to be back with the committee.

Amendments 115 and 127 are intended to increase the protection of common land in Scotland. Both amendments are in keeping with the recommendations of the land reform review group.

Amendment 115 calls for the repeal of the Division of Commonties Act 1695. Members will be aware that that act dates from the pre-democratic age, and that it was used—depressingly successfully—to enclose and privatise a great deal of common land in Scotland. However, it was not used to entirely privatise that land. There are pockets of land in Scotland that are still commonties and, although that legislation has not been used for many years, it seems odd that it remains on the statute book. The Land Reform (Scotland) Bill is a very appropriate way to address that in the immediate instance.

Amendment 127 addresses the wider protection of common land. It introduces the idea of a protective order for common land. Sadly, common land is not as widespread as it once was, but there are many surviving parcels. There is a continuing threat to the existence of those parcels of land, principally through a non domino dispositions and the recording of titles in instances where, using common sense, most people would recognise that there is no legitimate basis for granting that title.

In addition, most of us, including me, welcome the Scottish Government's intentions to complete the land register over a relatively reasonable time frame. That could potentially increase the risk of such dispositions being used unreasonably to gain title to existing common land. Given the intention to complete the land register, there is an additional incentive to include some kind of protective order. Amendment 127 is intended to do that.

I see that the Scottish Government issued a press release—just after midnight last night—that addresses both of the amendments. It signals an intention to ask the land commission and the Scottish Law Commission to look at the issues. Given that that press release has been put out, I would like to ask the minister to address a couple of specific questions.

13:30

First, is it the explicit intention of the Government to legislate to achieve the effects that my amendments are intended to achieve? If so, on what timescale does the minister think that that can be achieved, given that the land commission and the Scottish Law Commission will have to undertake their work? The land commission will have to set itself up and begin a great deal of other work that the committee agrees is necessary and then a suitable legislative vehicle will have to be found in the next session of the Parliament.

The proposals are not new—they have not come out of a clear blue sky. They are included in the report from the land reform review group, which is the review group that the Scottish Government established to consider those and many other issues. That report has been with the Scottish Government for well over a year and a half now, but just hours before today's meeting a press release was put out signalling an intention to address those matters.

It seems to me that the Scottish Government has had a long time to consider those matters. What view was taken about the Government's intention when that report was published, and why are we not using the Land Reform (Scotland) Bill as the appropriate vehicle to address those two matters? I hope that the minister will be clear in her answers to those questions so that the committee will know what is going to happen about those outstanding matters and when.

I move amendment 115.

The Convener: Thank you very much for that clear argument. As no other members wish to comment, I ask the minister to respond.

Aileen McLeod: I thank Patrick Harvie for explaining his amendments 115 and 127. We do not think that there is merit in removing the right in question from the owners of commonty through an amendment to the bill. It is worth highlighting that there has not been any consultation on, or consideration of, the issue during the development of the bill. There has been no opportunity for the Government or the committee to take or consider evidence on the impacts of such a repeal.

As Patrick Harvie has quite rightly said, the Government will ask the Scottish Law Commission to look at the 1695 act as part of its next tranche of work on statute law repeals, through which the commission makes recommendations for the repeal of obsolete legislation. In line with its usual practice, the commission will carry out research on the 1695 act and on other legislation that is proposed for repeal, which will be followed by consultation with interested bodies. If there are no objections, the repeal of the 1695 act could then be included in the next statute law reform bill. That sets out what the process would entail.

As Patrick Harvie has quite rightly said, the 1695 act is clearly antiquated: for example, there is a specific provision on the division of mosses in a commonty and what happens when the said mosses cannot conveniently be divided. Asking

the Scottish Law Commission to consider the repeal of the 1695 act will ensure that the purpose of the act is analysed fully and views from key bodies are sought before the act is repealed.

I have set out what the Scottish Government is doing, and on that basis I invite Patrick Harvie to consider withdrawing his amendment 115.

In relation to amendment 127, I appreciate the opportunity to speak about the establishment of a common land protection order. I understand where Patrick Harvie is coming from with that amendment. There can be concerns when land that has been used by a local community perhaps for generations, for which the ownership may be common, unclear or undisputed, is subject to a disposition a non domino by private individuals. In many cases it may be appropriate for the land still to be used by the community for the benefit of all.

The Scottish Government has considerable concerns about the detail of amendment 127. Under it, the only condition for applications would be that the land in question is not registered in either of the property registers. However, there may still be an owner, because some property in Scotland may have been acquired before the general register of sasines was established in 1617.

In addition, land that is not claimed generally falls to the Crown. Another concern is that the amendment does not provide a definition of common land. It appears therefore that an order under the provisions in amendment 127 could be applied for in relation to any land that is ownerless. The provisions also appear to exclude land that is owned in common, although that might be the type of scenario that the amendment is designed to cover.

The amendment might cut across a non domino dispositions aimed at completing title to a property. Those dispositions are often used when, for example, it is clear that a house is owned but there is some uncertainty about the associated garage or outhouses or the precise extent of the garden. Those are not areas of common land, but it seems that the amendment would be wide enough to cover them.

Furthermore, there would continue to be uncertainty about the ownership of the land. If there had been any concerns about the land, there would continue to be a lack of clarity over who would take responsibility for it. That might cause problems if any statutory bodies—for example, the local authority or SEPA—had to take any action in relation to hazards.

As long as such a common land protection order remained in force, it would be impossible to register title and consequently to complete the land register. Also, it may not assist in issues over abandoned or neglected land to have an additional obstacle to registering the owner.

As with amendment 115, there has not been full consideration and consultation on the detail of Patrick Harvie's amendment 127, and the committee has not taken any evidence on it.

Having outlined concerns about the specifics of the amendment, I acknowledge the fundamental point that has been made by Patrick Harvie. I agree that, as a general rule, land that is used and enjoyed by the local community should remain available to it unless there is a very good reason to take a different approach.

The Scottish Government recognises the need to ensure that common land remains available to local communities. That is why, in the light of the amendment, the Scottish Government is proposing to ask the new Scottish land commission, when it is established, to review the issue of common land generally.

The bill at section 20(2) enables the Scottish ministers to refer matters to the commission. While it will be for the land commissioners to determine their own programme of work, it is considered that common good land is an area that they will be keen to consider in the exercise of their functions.

The Scottish Government's proposal reflects our concern, shared by Patrick Harvie, that there may be insufficient protection for common land in Scotland. We propose that the review could also cover the issue of common good land that is held by local authorities. In addition, such a review by the Scottish land commission would also give an opportunity for wider consultation to take place.

In response to Patrick Harvie's direct questions, it is our intention to ask the Scottish Law Commission and the Scottish land commission to consider those issues and to determine whether it is necessary to legislate and, if so, how best to do that. If legislation is necessary, the Government would take that forward at the earliest opportunity.

We will ask the commissions to consider all recommendations. The Government has a wide, long-term programme for land reform and it is reasonable that we consider certain recommendations before others. Given that commitment, I ask Patrick Harvie not to press amendment 127.

The Convener: I call Patrick Harvie to wind up and press or withdraw his amendment.

Patrick Harvie: I am a wee bit disappointed by the response. There is still a lot of ambiguity about the time that the consideration will take. Given the length of time that these things take, that raises the possibility of the legislation not coming into force for perhaps another two or three years. That

is a substantial chunk of the period of time available for the completion of the land register.

There is also substantial risk that common land could be subjected to attempts to use a non domino dispositions.

On the minister's comment that there has been no time to consult on the proposals, I say again that both amendments relate to measures that the land reform review group proposed. Its report states in part 2, section 7, paragraph 8 that

"The Group considers that Registers of Scotland should ensure that the land registration process protects what might be considered genuine commons"

and, a few paragraphs later, it

"questions the continuing appropriateness of the 1695 Act allowing the division of a commonty at the instigation of one party".

The minister seemed to echo the position that the Government took during discussion of the Land Registration (Scotland) Bill. The Economy, Energy and Tourism Committee at the time were told:

"It is not desirable to remove this right"—

the division of commonty—

"from the owners of commonty".

The minister today seemed to imply that that remains the position of the Scottish Government, and that we need to look at what the original purpose of the Division of Commonties Act 1695 was.

It is fairly clear that the purpose of that act was to legitimise theft of land. The committee should not accept that we need to ask ourselves what its original purpose was: we should simply sweep it away.

I will press amendment 115. If the committee decides not to agree it, I will continue to engage with the Scottish Government on its process to move—I hope swiftly—to implementing what I am trying to do at a later time.

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Dey, Graeme (Angus South) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstentions

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

The Convener: The result of the division is: For 0, Against 7, Abstentions 2.

Amendment 115 disagreed to.

Amendment 127 moved—[Patrick Harvie].

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Dey, Graeme (Angus South) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstentions

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

The Convener: The result of the division is: For 0, Against 7, Abstentions 2.

Amendment 127 disagreed to.

The Convener: We will end our discussion of stage 2 of the bill at this point and begin again at group 17 next week. I thank the minister and her officials—and members of the committee—for their fortitude.

At the next meeting of the committee, we will continue our stage 2 consideration of the Land Reform (Scotland) Bill, and we will consider in private draft correspondence to the Scottish Government on the "Wildlife Crime in Scotland: 2014 Annual Report".

Meeting closed at 13:42.

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