



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 2 May 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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Scottish Parliament

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[The Presiding Officer opened the meeting at 14:00]

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. The first item of business is time for reflection, for which our leader is the Rev Alison Britchfield, minister at Tillicoultry parish church, Tillicoultry.

The Rev Alison Britchfield (Tillicoultry Parish Church): Presiding Officer, members of the Scottish Parliament, it is my privilege to address you this afternoon.

I wonder how many things you and I have in common. In many ways, probably not much; in others a great deal. One thing that I am certain about is that we all hold dear a desire to provide the best possible leadership to those whom we have committed ourselves to serving.

When I became minister at Tillicoultry four years ago, a large part of the church garden was overgrown and neglected and over time had become a dumping ground. It was my vision to transform it into a community garden, an asset that could benefit the whole community as an oasis of calm and a place where they could help if they wanted to. Over the past three years, some of my office-bearers have taken the vision and, by their leadership, transformed it into a reality. So it was that, on Easter Sunday, our outdoor dawn service took place in a wonderful calm and well-tended garden in the shadows of the hills. People come and go all the time. They sit on the benches, they join in the maintenance, they offer their skills or they just chat to one another or walk their dogs. Not long ago, a family were able to use the garden to release balloons at the time of a family funeral on the other side of the world. That is happening all because there was a vision and because others were willing to pick up that vision and take on the responsibility of leadership to make the dream come true for the good of others.

Leadership is never easy. It comes at a cost to ourselves in terms of time and energy. It can be frustrating when others do not share the dream or hijack it for their own ends. It can be painful when we are criticised for doing our best. It can be disillusioning when we are misunderstood. However, when our leadership works and inspires others to work and to lead too, it is all worth while.

You have a vision of the difference you personally can make, and you all have the task of

making a difference corporately. I urge you and encourage you to continue to bear the mantle of leadership, to persuade others to share it and to allow yet more to flourish under its protection.

May God bless you in that task.

Topical Question Time

14:03

Commercial Farm Income

1. **Mike Rumbles (North East Scotland) (LD):**

To ask the Scottish Government what its response is to figures showing that the average income of commercial farms decreased by 48 per cent in 2015-16. (S5T-00532)

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): I agree with Mr Rumbles that, although those reductions were not unexpected, they were still disappointing. As a fundamental part of the rural economy, it is important that agriculture performs well. There is a range of complex reasons behind the decline in farming incomes, primarily the lower revenues that are received for crops and livestock. Finding solutions to those issues is key, which is why we have appointed four industry champions to explore all the issues and take forward our vision for agriculture. They will also have a role to play in the working group that is currently being set up, as per Mr Rumbles's amendment in the debate on farming earlier this year, which will consider principles and policy for future rural support.

One bright spot in the figures is that costs also fell, which shows that our farmers and crofters are working hard to improve their efficiency. This Government will continue to support them to do that and to help them to diversify income streams.

Mike Rumbles: These are catastrophic figures and they are compounded by the Scottish Government's continuing failure to deliver farm payments on time. The average farm business income in the survey was just £12,500, which included support payments of £38,000, with a third of businesses making a loss. Less than half of farm businesses have had this year's payments processed by the Scottish Government so far. That should all have been done by December. On taking over ministerial responsibility for that shambles almost a year ago, the minister said that getting that right was his number 1 priority. Does he accept responsibility for the continued failure to deliver what is due to our farmers?

Fergus Ewing: I accept the responsibility that falls on my portfolio. However, as Mr Rumbles knows, or should know, and as I have already explained, the reduction in net farm business income arose primarily because of lower prices. That is simply a fact, but what is also a fact and should be made clear is that the timing of common agricultural policy payments does not impact on net farm business income figures. If Mr Rumbles was seeking to imply that it did, I am afraid that he

is incorrect. The payment window for this year's pillar 1 payments takes us to next month, to June, and I can assure Mr Rumbles and all members that terrific efforts are being made to achieve the targets this year, and a deal of progress is being made.

I regularly report to the Rural Economy and Connectivity Committee to answer questions on these matters, but I share the headline concern of all members about the reduction in incomes. What they show above all else is the essential nature of the European Union financial support payments to farmers and crofters. I hope that that is a point on which we can all agree.

Mike Rumbles: We cannot have sloping shoulders here. NFU Scotland said on Thursday:

"The viability, let alone profitability, of every Scottish farming business relies on three cogs working together—costs, markets and support"

from Government. It concluded that those things

"are conspiring to threaten the very existence of many."

I would have thought that the cabinet secretary would agree with me that it is a crisis. To date, less than half our farm businesses have had their payments processed. He mentioned the June date, but with only half the payments done, how confident is he that 95 per cent of payments will be made before the end of June, before the European Union takes out infraction proceedings against the Government? Our farmers need that support money and it is not forthcoming.

Fergus Ewing: Mr Rumbles is well aware that these are extremely serious matters, and I take them as such. However, it is reasonable to point out something that he has omitted, namely that, precisely because of the difficulties in the administration of the payments, loan schemes have been issued to farmers—last year in respect of the less favoured area support scheme, and this year in respect of pillar 1 and LFASS. Those loan payments have been substantially appreciated by a great many farmers whom I speak to.

In response to Mr Rumbles's second question, I say that we are working extremely hard to ensure that pillar 1 payments are substantially made in accordance with the timescale as set out, and I am quite sure that the Rural Economy and Connectivity Committee, which deals with the detail of the matter, will have the opportunity to ask me about that in the next few weeks.

Maree Todd (Highlands and Islands) (SNP): From his earlier response, it appears to me that the cabinet secretary agrees that the biggest risk to farming incomes, as the research makes plain, is Brexit and the loss of EU funding. Can he advise what guarantees he has had from the Tories at Westminster on future funding for

Scottish farming, and has he had any success in persuading it to keep its promise to address the convergence issues?

Fergus Ewing: The biggest risk to farmers in the future is that the EU support is not matched post-Brexit according to the UK Government's plans. I regret to report to the member that, despite having asked UK ministers George Eustice and Andrea Leadsom on numerous occasions—orally, in writing and in person—to confirm that the UK Government's plans post-Brexit are to match EU funding, which is worth £500 million per year to the rural economy, I have had no answer on that matter. That is despite the fact that, by my calculation, there are fewer than 24 months to go before the onset of the post-Brexit responsibilities. We are completely in the dark about that because, although EU funding is entirely a reserved matter, we have received zero information from the UK Government on its plans post-Brexit to support farming and rural payments.

The member's second point was about convergence funding. Convergence funding to the sum of £190 million was granted by the EU because Scotland—and only Scotland—qualified for it on the basis that the average payment per hectare was the lowest in the UK. Despite that, the funding has not been passed on to Scotland, so we have repeatedly asked the UK Government to pass the money to Scotland as it was intended for Scottish farmers who receive far less per hectare than farmers in England and Wales. I hope that the Conservatives will support that policy when we continue to demand that the money is repaid to Scotland, where it rightly belongs.

John Scott (Ayr) (Con): I declare an interest as a farmer and a food producer.

The First Minister and the cabinet secretary have already apologised to Scottish farmers and crofters for the delay in the 2015 CAP payments, and those apologies are welcome. Notwithstanding his response to Mr Rumbles, can the cabinet secretary tell members how many farmers' incomes in financial year 2015-16 were affected by the later-than-expected payments? What impact did that have across Scotland and, particularly, in less favoured areas and crofting communities on farmers' dramatically reduced income figures, which are under discussion today?

Fergus Ewing: As I have already made clear, the timing of CAP payments to farmers does not impact on farm business income. I accept that, if payments are made later than expected—for example, later than was delivered in previous years—there is, obviously, a delay in the receipt of payments by farmers. That is a matter of fact and Mr Scott has fairly pointed that out. That is precisely why I, as cabinet secretary, have instructed the latest loan scheme and LFASS

payments—we are in the course of arranging those—and why I arranged the loan scheme last year.

Incidentally, that is precisely why a substantial majority of the payments for the loan scheme that was issued last year were made earlier than before, so that farmers and crofters were able to manage their financial affairs. They received the funds in the first fortnight of November, by and large. It is because of that aspect that the Government decided to issue a loan scheme, so that the money would be in the hands of our farmers and crofters and, thereby, in the rural economy of Scotland.

I take all these matters extremely seriously, as Mr Scott realises, I think. I will continue to work day in, day out, as I did today, yesterday, on Sunday and on Saturday and as I do every day. I personally reply to farmers who email me about their complaints to say that they will be dealt with—I hope that that does not trigger several hundred more emails. We are working around the clock to sort out these matters, which we take very seriously.

Deer Management

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-05351, in the name of Graeme Dey, on behalf of the Environment, Climate Change and Land Reform Committee, on the “Report on Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016, 5th Report (Session 5)”. I call Graeme Dey to speak to and move the motion on behalf of the committee.

14:14

Graeme Dey (Angus South) (SNP): The report that we are considering this afternoon is the result of extensive committee scrutiny of SNH’s report on deer management, which the session 4 Rural Affairs, Climate Change and Environment Committee, as part of its work on the Land Reform (Scotland) Act 2016, asked the Government to produce no later than the end of 2016.

We thank everyone—stakeholders, clerks, the Scottish Parliament information centre and the independent experts that we heard from—for assisting us in the process.

It is fair to say that the topic of deer management provokes strong views; it is also fair to say that so too did SNH’s report. The committee’s task was to sift through the diverse opinions being offered on the content, to consider the evidence and to come to a view as to whether the progress made thus far represented the step change required, or whether that would in any case be delivered were the situation left to continue as it was. Although we recognised that considerable progress had been made in some areas of the country, our unanimous conclusion was that that progress did not and would not represent a step change.

Those members of the Environment, Climate Change and Land Reform Committee who also served on the RACCE Committee in session 4 had a strong sense of *déjà vu* while listening to the evidence from some deer management interests. They said that it was too early to judge and that they had not had enough time. That was exactly what the RACCE Committee, on which Angus MacDonald, Claudia Beamish and I served, was told about the deer code back in 2014—that the code had only been introduced in 2012 and that we needed to give it time to see the positive impact.

Biodiversity targets have to be met—and soon. We can no longer proceed with “Mañana” as the mantra. In the upland context, many deer management groups still do not have action plans that adequately address the public interest and will

result in positive outcomes for the natural heritage. I will come to the lowland context in due course.

As convener of the ECCLR Committee, I will lay out the series of recommendations that we have made to the Government. The committee has come at the topic from two directions. First, we have identified specific measures that should be implemented by the Government. Secondly, we have suggested that the Government might convene a short-life working group to consider other aspects. The group should call on a range of expertise and, although it should involve deer management interests, it should be chaired independently of those interests and of SNH.

I will deal with those other aspects in order. The committee recommends that the powers under section 80 of the Land Reform (Scotland) Act 2016 are brought into immediate use and effect and deployed as required. Although we recognise that significant challenges remain around deer management in lowland Scotland, we are looking for that to be addressed as a matter of priority.

We are calling for a strategic approach to managing deer numbers and impacts. SNH should be responsible for determining cull levels in the public interest, deer management groups should carry out deer counts using a clear and agreed methodology in their area on no more than a five-year cycle and return planned deer cull details to SNH, while the Scottish Government, through relevant agencies and local authorities, should undertake deer counts in areas not covered by a DMG.

Sitting alongside that work, the close season for stags should be reviewed with the aim of ensuring that such restrictions on shooting promote rather than hinder effective deer management from ecological and crop protection perspectives. Access to such data will, over time, identify trends on densities and inform appropriate culling levels based upon impacts at a local level. That will allow for local flexibility, rather than a one-size-fits-all approach.

There is a need for much greater clarity on public objectives and their relative importance should be set against private objectives at a local level and in each DMG area. Appropriate densities could then be set and both the densities and impacts monitored.

The committee is further of the view that the current powers—namely sections 7 and 8 of the Deer (Scotland) Act 1996—are inadequate. As the SNH report illustrates, section 7 agreements are failing to deliver. At the time of the report, 11 such agreements were in place. Deer density targets had been met in only six; habitat targets had been met in just three and partially met in two others.

SNH's failure to use section 8 powers is seen by many as being down to a fear that their use would be open to challenge. The committee recommends that the Government takes urgent action to devise alternative measures and simple provisions that lead to action to protect and to restore habitats and sites impacted by deer. An effective back-stop power fit for purpose is needed.

We recommend that the Government commissions with similar urgency an analysis of incentives and their use in supporting deer management in the public interest. We were also unanimously of the view that an action plan must be prepared to deliver—as the Scottish Gamekeepers Association has called for—a publicly funded network of deer larders across mainland and island Scotland to support greater opportunities for participation in deer culling.

The committee has offered its thoughts on Scottish Natural Heritage's performance on deer management. We are of the view that SNH has not provided the leadership that might have been expected and there has been a failure to adequately set expectations for deer management in Scotland.

SNH appears to have been unable or unwilling to enforce the legislation to secure the natural heritage interests. Further, we felt that knowledge and data gaps should have been addressed at an earlier stage by the commissioning of work in time to consider and incorporate the findings into the report. That said, the committee is concerned that SNH may not have the capacity to fully deliver all its duties, including deer management, without additional resources.

I turn to the proposal for a short-life working group. When taking evidence, we were struck by the range of expertise and thinking on deer management. We ask for that to be tapped into, to identify how best to deliver the actions that we have called for. That is not about kicking things into the long grass—far from it. We need to bring people to the table to work with a clear remit and to a tight timeframe to provide the Government with practical advice on the way forward for deer management in Scotland. The working group should report back no later than early autumn 2017.

Time constraints prevent me from going into the full detail of the suggested remit, but I will expand on two issues. One of the most striking aspects of the evidence that we received on lowland management was just how little had changed from the RACCE Committee inquiry of 2013-14. By way of example, despite those issues having been flagged up in the previous parliamentary session, and despite SNH advising that a range of work was under way, just one additional lowland deer

group had been established in the intervening period. It was acknowledged in the evidence-gathering process that in large areas of lowland Scotland there was no collaborative approach, a lack of data—the local authority performance in that regard was patchy—and there was no model, or mix of models, of deer management to be rolled out. We also learned that the Lowland Deer Network Scotland had not consulted its individual member groups before making its submission to the committee. Richard Playfair of the LDNS told us:

“I would like to think that we promote their views, but we do not necessarily know what their views are at any given time.”—[*Official Report, Environment, Climate Change and Land Reform Committee*, 13 December 2016; c 9.]

That admission seems indicative of an organisation that is, perhaps, not functioning as effectively as it might.

We call on the Government to do three things, albeit with input from a short-life working group: first, to look at piloting a variety of new approaches, taking account of best practice examples; secondly, to review the approach to involving local authorities in lowland deer management, exploring one that encourages rather than requires their involvement; and thirdly, to examine the role and operation of the Lowland Deer Network, consider whether it is sufficiently independent of the agencies that fund its work, and determine what role it should play in promoting deer management in the future.

With regard to fencing, the committee is concerned that the costs are considerable and will continue to rise as existing fencing deteriorates. It was unclear to us whether those significant costs to the public purse are justified, when set against the possible benefits of increased culling. Our opinion is that a rebalancing may be required, but we seek an SNH examination of the evidence base around that issue to inform such a decision.

That is an overview of the report. I look forward to hearing from members of the committee and others as they explore its contents further.

I move,

That the Parliament notes the Environment, Climate Change and Land Reform Committee's 5th Report, 2017 (Session 5), *Report on Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016* (SP Paper 117).

The Presiding Officer: I advise members, particularly front-bench speakers, that we have plenty of time in hand, so members may feel free to take an extra minute if they wish. I call Roseanna Cunningham to open on behalf of the Government.

14:23

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): Thank you, Presiding Officer—I think.

In my previous incarnation in this job, between 2009 and 2011, I spent a lot of time in discussions about deer management with colleagues, environmental non-governmental organisations and land management organisations. There are still a few members left who might remember that on-going debate. For much of that time, I was preparing for and then taking through the Wildlife and Natural Environment (Scotland) Bill, which of course became an act—a piece of legislation that, among other things, set out to address the shortcomings of the Deer (Scotland) Act 1996.

It is with a slight sense of *déjà vu* and with some disappointment that I return to the issue again, with many of the same claims and counterclaims still being made about how deer are managed in Scotland, the economic benefits that they provide and their impact on the natural environment.

My first point is that the situation is not exactly the same as it was in 2011. There has been considerable progress, but that progress has been patchy. Many of the DMGs have done well, but some have done very little, especially when assessed against public interest criteria. There are DMGs that are newly established, and perhaps it is not realistic to expect to see much progress from them in a narrow timeframe, but in other areas there are no collaborative deer management arrangements in place at all.

In its report, SNH notes that, despite the progress that has been made, grazing by deer and other herbivores is a major cause of “unfavourable condition” status in protected areas, and deer grazing is a major factor in limiting the recovery of native woodlands. The crucial point is that, if deer densities were lower across much of Scotland, the economic benefits could be retained while, at the same time, a reduction could be brought about in the costs associated with deer-vehicle collisions and in the impacts on forestry.

The Environment, Climate Change and Land Reform Committee has now produced its comprehensive and detailed look at the issues associated with deer management. I am very grateful to the committee and its staff for the thorough job that they have done in examining the issues. I am grateful also to the stakeholders and others who gave written and oral evidence in support of the committee’s work. It is significant that the committee has come to broadly the same conclusion in its report about the present position of deer management in Scotland as SNH did in its

report—that, although progress has undoubtedly been made, much more remains to be done.

Where the reports diverge is on what needs to be done. To be fair to SNH, I should say that we did not ask it to come up with solutions in its report. The report was commissioned to answer a specific question that was agreed with the then Rural Affairs, Climate Change and Environment Committee in 2013. That question was whether, by the end of 2016, the present voluntary system had delivered a step change in effective deer management. I think that that was the discussion that Graeme Dey referred to in his opening comments.

As such, the SNH report is a snapshot of deer management in mid-2016. It is a comprehensive snapshot, however, that brings together much new information and analysis, focusing in the main on the impacts of deer management on the public interest and bringing together information on the socioeconomic impacts. It is fair to say that the conclusion of the SNH report is that the step change had not been delivered by the deer sector and that there was a lack of confidence on the part of SNH that the present track would deliver that change, particularly with regard to the achievement of the 2020 biodiversity targets.

As we know, the committee’s report goes further in calling for changes that include new legislative back-stop powers, new powers for SNH to set cull targets, consideration of a new statutory duty to manage deer and the establishment of an independent short-term working group to provide advice on those issues. Nevertheless, I know that there are other views and proposals among stakeholders—for example, proposals to set a Scotland-wide deer density target and for a new management standard for deer—and we are still very much in listening mode.

I have found the SNH report and the committee’s work very helpful in formulating my thinking, to which I am confident that the debate will also contribute. Although I am not giving a formal Government response today, I can say that I am determined that we will take the necessary steps to address the concerns that have been expressed. I do not want to think that, in another five years, we will be having the same debate again. However, we will seek solutions that recognise the realities of the world in which we live. There are no large sums of public money to hand out, and the impact of Brexit on our own legislative timetable is still being assessed. Balance will be the key—the balance to be struck between maintaining economic benefits and protecting and restoring the natural environment and the continuing desire to build and carry consensual support from all those with an interest in managing deer.

14:28

Peter Chapman (North East Scotland) (Con): I refer members to my entry in the register of members' interests.

I am delighted to open the debate on behalf of my party because I have a real interest in the subject, having been a main board member of SNH for six years—although, admittedly, that was some years ago.

Deer management continues to be a contentious issue—it certainly was in my time, and I am sure that it will remain so going forward. The most fundamental challenge facing us is the lack of up-to-date population estimates for all species of deer. I welcome the fact that SNH is working with the James Hutton Institute to provide numbers across the red deer's main open-hill ground range, but the lack of systematic monitoring of deer in lowland areas and in woodland means that we have only limited information on roe, sika and fallow deer.

That said, we do have some estimates of those numbers. We know that numbers of red deer increased markedly from about 1960 and reached a peak in 2000. Since then, numbers have stabilised. Based on the estimates that we have, it seems that deer density in 2016 was around 12.5 deer per km², which is more than enough to contribute to damage to natural features. If we compare that with the estimated figure of eight deer per km² in 1960, there would appear to be a need to reduce numbers. However, out of the 14 deer management groups that were scrutinised, only five had culled to a level that was needed to reduce the population.

Grazing—by not just deer but other herbivores—is a major cause of the unfavourable condition of natural features in protected areas. We also know that more than a third of native woodlands are in an unsatisfactory condition because of the impact of herbivores, and that they limit woodland condition recovery and natural regeneration.

In addition to the environmental benefit, good deer management has clear economic benefits. Given that more than 700 full-time jobs are associated with deer management, we should acknowledge the importance of that work in contributing to the viability of our rural economy. Deer stalking supports increasing levels of tourism and, of course, the sale of venison. In that regard, I support and welcome the call for public funding for the establishment of a network of deer larders across Scotland.

My experience in this field comes from my work with SNH rather than from work in the countryside with deer management groups, but I have concerns about DMGs. They are having mixed

success on the ground, and fewer than 50 per cent of them have adequately identified actions in their plans to manage the impact of herbivores on designated features. I am glad that improvements have been made in quantifying and auditing resources through the planning process. That said, I still have concerns about the success in linking planning with implementation through identifying the specific steps that are necessary to deal with management issues.

However, as Scottish Land & Estates has pointed out, it is right that we give DMGs the time to deliver further improvements. We must also recognise that two years is far too short a period in which to see real improvements in biodiversity on the ground.

I note the Environment, Climate Change and Land Reform Committee's specific criticism of the lack of a formal structure for lowland deer management and the lack of leadership from SNH on the matter. Although there is some management in the lowland areas on private land through deer stalking, I recognise that that will need to be looked at further to ensure that we are hitting the required targets. The lack of leadership from SNH has quite possibly contributed to the delay in the development of deer management plans, and that is a result of SNH's failure to be clear about its expectations from the start.

There is undoubtedly more to be done—and some deer management groups need to be encouraged to do much more. However, I welcome the progress of DMGs so far and I hope that we in the Parliament can continue to support their plans as we seek to protect natural features in protected areas. I would argue that we need to give the process more time to bed in and to start showing the results that we all want to see—namely, deer numbers at sustainable levels, healthy animals on the ground, and our natural heritage and biodiversity in better condition.

14:33

Claudia Beamish (South Scotland) (Lab): The Environment, Climate Change and Land Reform Committee welcomes the fact that progress has been made in deer management in Scotland in recent years, but it remains a complex issue that involves competing objectives within and across deer management groups, with local communities often having little involvement. Some areas do not have an established deer management group, as we heard from Graeme Dey and Roseanna Cunningham.

According to the forest policy group's briefing for the debate, the committee's report is "a timely alarm call." The briefing also states that our recommendations

“show that the entire regulatory system needs to be recalibrated to meet the legitimate expectations of society in the 21st Century.”

That is indeed the case. Scotland has battled a growing problem with wild deer for over 150 years, but the issue has developed to damage some of our woodland and to threaten biodiversity, public safety and the welfare of the deer themselves in some instances. Although it would serve us well to remember that deer are wild animals and belong to no one, the issue of shootable stags on properties that manage stalking is one of the reasons why deer management has not been properly addressed in the public interest.

Overfeeding can undermine woodland regeneration efforts and has a broad knock-on effect on important habitats and biodiversity. As we heard from the committee convener, Graeme Dey, Scotland’s handling of deer management will be pivotal for biodiversity improvements for the future, and there will need to be a redoubling of efforts to achieve the Aichi 2020 target. As we heard in committee, the evidence shows that deer in Scotland can be three times smaller than deer in Norway because of environmental conditions and competition for food. It is untenable to continue to allow this public resource to go undermanaged and, in some places, inappropriately managed.

As a member of the Rural Affairs, Climate Change and Environment Committee in the previous session of Parliament, I took through deer management amendments to the Land Reform (Scotland) Bill, along with Mike Russell. It is encouraging that the deer management parts of the Land Reform (Scotland) Act 2016 are now being implemented. It was my amendment to the bill that ensured that the code of practice will be reviewed every three years. Given the variability of performance among deer management groups, that regular monitoring is vital for identifying progress and challenges.

Are those and other efforts enough, however? The Environment, Climate Change and Land Reform Committee has suggested that there should be a statutory duty to comply with the code of practice on deer management—that duty is clearly necessary. The code of practice was brought in as part of the Wildlife and Natural Environment (Scotland) Act 2011, but it has always been voluntary for everyone apart from public bodies. At present, SNH cannot set cull targets; it can only request returns. We need a clear expression of the public interest at the local scale, using tools such as the land use strategy, regional land use partnerships and deer management groups, which should be applying herbivore impact assessments. Once we have seen that expressed spatially and it is publicly available, SNH should set cull targets to accord

with the best land use outcomes for a specific area.

In that context, I draw attention to the committee recommendation that is stated in paragraphs 319 and 323 of the report. It is a difficult issue because, as the cabinet secretary said, in straitened times, it is hard to know how some things will be funded and supported going forward. However, it is a very important issue for the whole of Scotland.

Turning to lowland deer management, our committee report states:

“There are significant challenges for deer management in lowland Scotland and the Committee is disappointed that there has been so little progress and in much of lowland Scotland there are no formal collaborative structures”.

It continues:

“This needs to be addressed as a matter of priority.”

Vehicle collisions with deer, the intrusion of deer into suburban areas, fencing costs and culling costs are serious concerns. Without more formal collaboration than the present Lowland Deer Network and without real Scottish Government support for capacity and training for local authority involvement, those challenges will remain intractable.

Changes must also support sustainable deer harvesting. I recently met the Scottish Gamekeepers Association, which is

“building a constructive case for incentivising the public interest in deer management through the development of community larders and the utilisation of the existing local skills base.”

That would support local employment and the marketing of venison to help with food poverty or for high-end purposes, such as Tweed Valley Venison’s Thai fillet of venison recipe.

Mike Daniels of the John Muir Trust has stated:

“These modest reforms proposed by the environment committee offer us a way out of the endless cycle of debate towards a brighter future for our land that would benefit nature, local communities and the entire nation.”

I call on the Scottish Government to set up a working group that is chaired independently, as highlighted by our committee’s convener, in order to help take things forward. However, there are actions that should be happening now. I commend the report to the Scottish Government.

14:39

Emma Harper (South Scotland) (SNP): I begin by reminding members that I am the parliamentary liaison officer to the Cabinet Secretary for Rural Economy and Connectivity. I also take this opportunity to thank my fellow MSPs on the Environment, Climate Change and Land Reform

Committee, the clerks to the committee, the witnesses and everyone else who has been involved for their work on the committee's report.

It is clear from Scottish Natural Heritage's report that progress has been made on deer management in Scotland in recent years, and that is welcome. As the committee's report reflects, however, it remains a complex issue. Deer management groups across the country often have competing objectives, and many areas do not have established groups.

In November 2013, Rob Gibson MSP, the then convener of the Rural Affairs, Climate Change and Environment Committee, said:

"The issue of how we manage our deer populations and their social, economic and environmental impacts can be a controversial one. These issues have also divided some local communities."

That is still true today, because there are significant differences between the management of deer in the uplands and the lowlands. It is the lowlands that I am concerned about, as particular issues exist there.

Lowland deer management is achieved in a number of ways, ranging from informal arrangements with local deer management groups and landowners and more formal stalking that is leased from larger commercial forestry companies to the 11 formal lowland deer groups. Those variations are a result of the range of species, different behaviours of red and roe deer and differences in patterns of local land ownership. There are also practical challenges in managing deer in lowland settings, where there is far more public interest and indeed more public access.

Increasingly, there is an expectation that deer management should support public benefits. It is also clearly vital to Scotland's biodiversity strategy and the plans for climate change mitigation through woodland expansion and peatland restoration.

In areas of the lowlands, there has been insufficient progress in ensuring that formal, collaborative structures are in place for deer management. In the south of Scotland, we have reasonable coverage, with deer management groups in south Ayrshire and Wigtownshire, central Galloway, east Dumfries and Galloway, Eskdalemuir and the Borders. However, there are still uncovered areas, which, the committee notes, results in a lack of the information that is necessary to control the environmental impact of grazing deer.

However, as the Association of Deer Management Groups points out in its briefing to members, it is not always correct to assume that, where there is no deer group, no deer management is taking place. There are over 6,000

deer managers in Scotland who are qualified to deer stalking certificate level 1, and many of them will be active in the lowlands in promoting voluntary collaborative management and encouraging engagement from the farming and landowning sectors and local authorities.

As the cabinet secretary pointed out in her evidence to the committee, SNH is not solely responsible for delivering a step change in deer management, and deer management groups and private deer managers must share that responsibility. I am therefore of the opinion that SNH must strive to work collaboratively with the groups. That will involve serious consideration of the evidence-based views that are expressed by deer managers, who often have an excellent understanding of how best to achieve a balance between the environment, employment and deer welfare.

I was pleased to hear SNH confirm at committee that work is under way to highlight areas where it can develop better collaborative structures with the Lowland Deer Network Scotland. A pilot project is under way that is looking at that range of approaches. There are recreational stalkers who want to go out and do more stalking but do not have their own land, and SNH is looking at matching such people with landowners who want deer to be managed. The Forestry Commission, which is a key player in the lowlands, with large landholdings, is a partner in that piece of work, which is due for publication this year.

I hope that SNH will work closely with the Lowland Deer Network Scotland, private deer managers and local groups to move towards a more structured approach in some lowland areas while being mindful that deer impacts are often more important than numbers and should be considered in a local context. We certainly need to consider an organised, structured and professional approach to the management of deer populations that is based on environmental impact and not necessarily on their numbers.

14:44

Finlay Carson (Galloway and West Dumfries)

(Con): I welcome the opportunity to take part in today's debate on deer management. I also welcome the cabinet secretary's commitment to make improvements, because deer management is not up to the mark. The report on deer management that SNH published in 2016 showed that the present voluntary approach is not sustaining or improving natural heritage.

Wild deer are important to Scotland's rural economy. They provide us with healthy food and recreational opportunities that bring tourism to the country, and they are integral to Scotland's

ecosystem. However, the ecological impact can be great when deer numbers get too high. Unmanaged deer populations can lead to the suppression of tree and shrub regeneration, which can cause a loss of species diversity. That will ultimately damage Scotland's natural heritage.

The native woodland survey of Scotland found that more than a third of all native woodlands were in an unsatisfactory condition because of herbivore impacts. Evidence suggests that deer are a major factor in limiting woodland condition recovery. There are also socioeconomic benefits to deer management, as it supports employment, contributes to rural tourism and provides sporting income. There is also the sale of venison.

A major area for improvement must be how we manage lowland deer in the future. I am disappointed that there has been little progress towards proper deer management in much of lowland Scotland. In many lowland areas, there are no formal collaborative structures for deer management, and that has to be addressed urgently.

A number of challenges undoubtedly surround how we improve lowland deer management, some of which are highlighted in the Environment, Climate Change and Land Reform Committee's report. They include the complex land ownership picture; the fact that a collaborative approach is not in place in large areas of the lowlands; patchy local authority performance; having no model of deer management to roll out; and a lack of landowner investment. Although I do not doubt that those challenges are real, they are not barriers that are impossible to overcome.

There seems to have been little improvement since the Rural Affairs, Climate Change and Environment Committee recommended in 2014 that the Scottish Government should address the lack of success in lowland deer management. Since that committee's report, only one additional deer management group has been established. It is therefore clear that we need to do more.

The ECCLR Committee has recommended that "the Scottish Government give further support to the piloting of new approaches";

that there should be a fresh look at the role of local authorities in managing the deer population and the incentives and legislation for that; that how the Lowland Deer Network is working should be explored; and that much better working with the lowland deer management groups should be encouraged. Deer panels are one way of providing considered advice. I welcome the increased local community engagement that those panels can now take part in.

The committee has suggested that the Scottish Government should act to make regulations that give deer panels further functions that relate to community engagement and that SNH should give full consideration to the appointment of deer panels, particularly in lowland Scotland. Such steps could overcome problems in various parts where deer management groups do not exist.

Progress has been extremely slow. It is time for the Scottish Government to take responsibility and implement a lowland deer management strategy that will properly protect Scotland's ecosystem.

I completely support the ECCLR Committee's recommendation to the Scottish Government that an independent short-term working group should be established as a matter of urgency to provide clear advice on the way forward for deer management.

The ECCLR Committee has provided the Scottish Government with a thorough and comprehensive report, and it is imperative that the Scottish Government now addresses the issues that are highlighted in it.

The Presiding Officer: I call Angus MacDonald.

14:48

Angus MacDonald (Falkirk East) (SNP): Is there time in hand, Presiding Officer?

The Presiding Officer: There is plenty of time in hand, Mr MacDonald. Speak at length.

Angus MacDonald: Thank you.

It is fair to say that deer management in Scotland has turned into a long-running saga—not quite one of Icelandic saga proportions, but a long-running one all the same. The arguments about what constitutes effective and sustainable deer management are not new. The passing of legislation to control deer and amendments to that legislation have continued since the Deer (Scotland) Act 1959 came into force, and the issue has so many aspects that it is impossible to cover them all in the debate.

When I served on the Rural Affairs, Climate Change and Environment Committee in the previous parliamentary session, I became acutely aware early on that Parliament and the Government needed to grasp the issue and that drastic improvements to deer management were needed. One frustration of my former colleagues on that committee and of the current members of the Environment, Climate Change and Land Reform Committee has been SNH's failure to properly use section 8 powers. I admit that I do not feel comfortable criticising SNH because, as a rule, it does a good job in undoubtedly challenging

financial times. However, sometimes it does not do that, which may be because the legislation is lacking. There is a strong argument to suggest that that is the reason for SNH's reluctance to implement section 8 powers.

In evidence to the committee, SNH admitted:

"we perhaps have not used those powers"

under sections 7 and 8 of the 1996 act

"or pushed the use of those powers as quickly as we might have done. However, our hand has sometimes been stayed by threats that our evidence base is not good enough and that therefore there would be a challenge."—[*Official Report, Environment, Climate Change and Land Reform Committee*, 24 January 2017; c 61.]

As a result, the

"Committee questions the 'risk appetite' of SNH in this respect."

When Ian Ross, as the chair of SNH, gave evidence to the committee, he admitted that there had been frustration at board level as well as further down the line and that enforcement had not been utilised to its full extent.

There is therefore a strong argument—in fact, it is the committee's view—that the legislation that aims to protect the natural environment from deer impacts is not fit for purpose. It was clear to the committee that SNH has failed to provide leadership in managing the impact of deer, albeit that that is not entirely the organisation's fault.

The impact on the environment has been a running sore in the Scottish countryside for decades, if not centuries, and it has caused environmental degradation and high costs to the public purse. Scarce—and soon to be scarcer—Scottish rural development programme funding has been used to erect miles and miles of deer fencing. That money could have been put to other uses. For example, £23.3 million of public sector funding was spent on deer fencing—enough to cover the distance between Scotland and South Africa—between 2003 and 2012. Given that there is an issue with the deterioration of the fencing, which covers huge distances, the SNH report suggests that if public funding was used to replace fences at the end of their operational life, a further £100 million could be required at 2016 prices.

The committee was unclear as to whether the significant cost of fencing to the public purse is justified when it is set against the benefits of increased culling levels. That is why we recommended that SNH should examine the full costs and benefits of different approaches to deer management, based on the available information.

There is no doubt that unsustainable deer numbers are impeding the achievement of Scottish Government targets on biodiversity and climate change mitigation through woodland

expansion and peatland restoration. We need urgent action from all parties—SNH, local deer management groups and the Scottish Government, to name but three—as time is of the essence if we are to meet our international commitment to the 2020 Aichi biodiversity targets as well as the targets in the Scottish biodiversity strategy.

It is not just the ECCLR Committee that is frustrated that section 8 remains unused when use of the power might be justified. In evidence to the committee, Simon Pepper of the Forest Policy Group stated:

"The fundamental key to an effective system is whether there is a credible back-up power"

and claimed that we do not

"have a credible back-up power in place."—[*Official Report, Environment, Climate Change and Land Reform Committee*, 13 December 2016; c 53.]

It is fair to say that other stakeholders held a similar view, to varying degrees.

As a result of the comments that were received about section 8 powers, the committee was firmly of the view that, if new backstop powers are to be introduced, they must be supported by clear direction from the Scottish Government, and SNH must be empowered and resourced to deliver them.

In closing, I will touch on an issue that was raised with me by landowners during my travels in the Hebrides, and which has been raised in the past by lowland deer management groups: the need for more deer larders—to which the convener referred—as well as the refurbishment of existing larders. The committee has recommended that the Scottish Government should prepare an action plan for wider supply chain development for deer carcasses and that it should deliver public funding for the establishment of a network of deer larders throughout Scotland, including the islands, to support greater opportunities for taking part in appropriate culling activity.

A good outcome of our committee's work would be a fit-for-purpose deer larder network across Scotland, and—importantly—the introduction of legislation that allows SNH to ensure that culls that are in the public interest are delivered, ideally without legal challenge.

14:53

Mark Ruskell (Mid Scotland and Fife) (Green): I welcome this committee debate on the perennial, and often vexed, question of deer management in Scotland. I thank all those who participated in the inquiry, and I highlight the contribution of experienced members who served on the predecessor Rural Affairs, Climate Change

and Environment Committee, which took such an important lead on the topic.

Some progress has been made over the years, but the latest SNH report reminds us that we have yet to see a step change in the management of deer populations so that they can exist within the carrying capacity of the ecosystems that they inhabit. Some of the debate among stakeholders on the SNH report was about the accuracy of precise deer counts from helicopters and on foot, but that largely misses the point. The step change that SNH calls for is about meeting the public interest objectives on the ground. Although there are undoubtedly excellent examples of deer management groups that are achieving those objectives in full and profitably, we need to drive progress across the board.

The time for bolder action is now, because many of our important and threatened habitats recover slowly. Failure to take action now, combined with climate change and a dwindling pot of post-Brexit funds for habitat restoration, could tip those habitats over the edge. Peatlands, montane scrub, broadleaved upland woodlands and Caledonian pinewoods are captured by our Aichi biodiversity commitments, but grazing pressure, soil erosion, tree damage and habitat fragmentation are all strongly connected to deer population levels that are simply too high.

That underlines the need to act positively on deer management and to bring into life the national ecological network, on which we recently voted and agreed in the chamber. It would be great if, in closing, the cabinet secretary reflected on the progress towards establishing that network. The fact that fewer than a quarter of DMGs have properly identified the sustainable levels of grazing for their areas demonstrates that the step change has not yet happened, as does the fact that less than half of DMGs have identified practical actions to manage deer impact on habitats that are meant to enjoy protection.

It is clear that SNH's resources and powers to intervene are not adequate and that a simple and effective compulsory backstop is needed to drive voluntary good practice alongside practical incentives. Alongside that is a case for implementing immediately the section 80 powers under the Land Reform (Scotland) Act 2016 to establish DMGs where there are gaps and where more community involvement is required. However, the compulsory backstop needs urgent examination and the starting point should be a short-life working group.

The committee agreed unanimously that a new framework is needed in which SNH determines the cull level that is required to deliver the public interest and DMGs monitor deer levels and submit plans to SNH for discussion and, if required,

revision. In addition, the working group needs to consider questions such as the cost to the public purse of fencing and the approach to deer management in the lowlands.

We considered it important for such a group to be tasked with looking further afield at deer management in other countries. There is much to learn, especially from our Nordic neighbours. The evidence that the committee took from Norway was compelling. The approach there focuses on the health of the animal first as an indicator of the health of the ecosystem that sustains it. Lower deer population densities in Norway have resulted in higher carcase weights, greater fecundity and more impressive antlers compared with Scottish deer with similar genetics. It is not surprising that long-term studies of the deer population from Rum have highlighted that for decades. Norway has a live system of management that appears to work well and which has also controlled another major cost to the public purse—that of road accidents.

What do shooters and tourists expect to see in Scotland? Is it herds of emaciated deer sweeping across the moor or the monarch of the glen, resplendent with his 12-point antlers? There have to be economic advantages to putting deer and ecosystem health first.

One of those advantages could come from developing deer larders and supply chains for venison, especially in the lowlands. The lowlands are a gap that points to the need for more extensive networks of gamekeepers and stalkers to gather the data and manage populations. More, not fewer, jobs would help to manage an ecological network across the country.

I look forward to action from the Scottish Government and to the committee returning to pick up the thread of scrutiny when the working group reports.

14:58

Mike Rumbles (North East Scotland) (LD): Deer management has been a controversial and complex issue ever since I was first elected to Parliament back in 1999. I was a member of the Rural Affairs Committee, and we looked at the issue in our very first parliamentary session. It is interesting that on my return to Parliament for the fifth session, the committee responsible for the issue is now the Environment, Climate Change and Land Reform Committee and not the Rural Economy and Connectivity Committee—I see the REC Committee convener smiling at that.

There has been a welcome stabilisation in overall deer numbers in the past 10 years, but concentrated excessive deer numbers are still having a significant impact on the environment, and the committee has noted the urgency of

addressing the challenge. Scottish Natural Heritage's report highlights its belief that half of all deer management groups have failed to identify the actions needed to control the activities of deer, so the scale of the problem is huge. Identifying the scale of the problem is a necessary first step before identifying the way forward in solving the problem.

The committee has taken the view that despite the best attempts of SNH and the Association of Deer Management Groups, it cannot be confident that they are capable of delivering the change that is required. The committee calls for a statutory duty of sustainable deer management. It believes that SNH should be responsible for determining cull levels and that deer management groups should carry out effective deer counts and return information on their planned deer culls to SNH, with agencies of the Scottish Government being responsible for that in areas that are not covered by deer management groups.

I find it surprising that at the same time as calling for more involvement from SNH, the committee is severely critical of the organisation for failing to provide the required leadership on deer management. SNH appears to the committee to have been unable or unwilling to enforce the law as it stands to protect our natural environment. Indeed, the committee states in its report:

"The Committee shares the frustration of many that Section 8 remains unused where use of the power might be justified."

We have heard members say the same thing in the debate. The committee goes on to say that it

"is not convinced the currently available suite of powers are adequate".

When a committee uses the phrase "not convinced", we all know that it is diplomatic speak for, "The current legislation is not fit for purpose." I see that the committee convener is nodding his head.

I am not convinced that new legislation is the answer. Why? SNH recognises that there has not been a detailed assessment of the barriers to improved deer management and confirms that it has not carried out a full analysis of how incentives, for instance, have been taken up or how effective they could be. I suggest that that must be the starting point. Why has no effective assessment been carried out to date? The issue is not recent; it has been years in the making.

Positive reinforcement of good practice is always, in any field, more effective than wielding a big stick. I suggest that the Scottish Government starts by finding out which incentives are effective in improving deer management rather than simply going down the road of saying that we must have more legislation.

We surely want a situation whereby everyone—

Claudia Beamish: Will the member take an intervention?

Mike Rumbles: Yes, of course.

Claudia Beamish: How much more time is needed for those groups that are not getting their act together in the public interest and are not involving communities? Indeed, how much more time is needed for those places where this is just not happening? We are looking back years; do we have to look forward years as well, Mr Rumbles?

Mike Rumbles: I understand the frustration of the member but that is no reason to jump to legislation.

Claudia Beamish: I am not jumping.

Mike Rumbles: I am not saying that the member is jumping to legislation; I am just concerned that the Government could jump to legislation.

I reiterate the point—why have we not looked at what incentives are effective? It is natural in any walk of life, as I have just said—Claudia Beamish is shaking her head. We get far better results from people if we can incentivise them to do something correctly, rather than using the threat of punishment. That might be the difference between the political perspectives in the chamber.

We surely want a situation whereby everyone gains—where land managers gain through incentives, the public gain and our environment gains. At the very least, we should find out which positive incentives to improve deer management would be most effective; I am astonished that that has not already been done.

15:04

Linda Fabiani (East Kilbride) (SNP): A few of my colleagues have expressed surprise that I have asked to speak in a deer management debate. However, there is a particular aspect of deer management that I feel has to be addressed—peri-urban deer.

The report and all the discussion refer to lowland deer, but I feel very strongly that peri-urban deer, which is much more specific, have not been well-enough recognised by either SNH or the Lowland Deer Network, or, indeed, in popular opinion. My colleague Gordon MacDonald has just told me that when he moved to Cumbernauld, his father was attacked by a stag, so there you go—who would have thought it? It was not that long ago—he looks a lot older than he is.

Reducing the environmental impact of wild roe deer in the central belt is a real and challenging issue that has not been adequately monitored or

managed. Investment, attention and energy have always focused on deer management in the Highlands of Scotland, for very valid reasons, so I welcome the fact that the Environment, Climate Change and Land Reform Committee's report acknowledges some of the issues that need to be addressed. It recognises the rapid increase in wild roe deer numbers in the central belt, which is causing jeopardy to road users and environmental impacts on public and private grounds. Something that a local deer manager said to me has stuck in my mind, which is that of course that is happening, because we are carrying out all sorts of infrastructure projects and building houses but, actually, the deer were there first.

There are particular difficulties in managing the deer on public ground, because the response from local authorities is really patchy. As with so many other agencies, local authorities in the central belt do not recognise the particular issues. The committee is right to say that a one-size-fits-all approach does not work and I was pleased that it recommended setting up a short-term working group. I cannot recommend strongly enough that that working group should include expertise from local urban deer managers with the skills, experience and knowledge to help us to move this agenda forward. SNH trained many recreational deer managers in the central belt to a very high standard, so there is a significant resource in central Scotland that we should use to much better effect to manage deer. We find that deer management is often commissioned from private contractors, rather than from those who have been keeping our roads, streets and towns safe for many years.

I think that I mentioned the South Lanarkshire deer group earlier, which is a group that I have been working with for many years. It is well noted for the standard of its collaboration between deer managers and other partners, and it has been recognised for its contributions to training and the deer code. In fact, the development of other deer groups has been modelled on that group. I do not understand why groups such as that are not routinely included in deer management plans, because it means that their local knowledge and expertise are ignored. Again, that is about a one-size-fits-all approach, which we should not be pursuing.

Edward Mountain (Highlands and Islands) (Con): It is interesting that there are urban areas in which deer come into conflict with the population, not only on roads but in gardens. Does Linda Fabiani feel that fencing and excluding the deer from those problem areas could play an important part in making sure that we can still see wildlife in urban areas?

Linda Fabiani: While that sounds like quite a good idea, the complexity of deer management in cities, towns and urban settings requires to be looked at a lot more, rather than coming up with instant solutions. That hits at the heart of the problem: we have not really looked at the issues of urban deer management and are still trying to apply solutions that are perhaps better for areas where deer herd, for example, than for areas where there are individual family units of deer, such as there are with the roe deer in the central belt. The SNH report did not demonstrate detailed knowledge and understanding of the very different challenges that exist for peri-urban and urban deer management as opposed to rural deer management.

Urban Scotland is no longer swathed in woodland. We have farms, smallholdings, private land, publicly owned land and housing estates. They need very different solutions and relationships, so the short-term working group is welcome, but we need to ensure that we cover all aspects.

I would like to move on quickly to another aspect, if there is time, Presiding Officer.

The Deputy Presiding Officer (Christine Grahame): There is time in hand. You rarely speak, so I will be generous.

Linda Fabiani: Another aspect of deer management that the committee report covers is the establishment of deer larders to help with the processing and marketing of venison products, which a few colleagues have mentioned.

Venison—deer meat—is one of the most nutritious forms of protein that we produce in Scotland. It is grown naturally and is abundant in the central belt, but it is not available to consumers in central Scotland. One of the most valuable forms of protein is on our doorstep and close to big population centres, yet we are the only people who are not able to consume it, other than in tiny quantities, because most of that valuable resource is exported directly to Europe. That is great, but it should also circulate in the local economy. The reason why it does not is a lack of infrastructure.

Although we have many highly qualified deer managers in the central belt, there is no infrastructure to deal with deer after they have been culled. Therefore, I ask that we look into setting up larder facilities, so that deer can become a local venison resource that benefits the communities that, often, would benefit most. We could produce good-quality food with a low number of food miles, could reduce the sickening behaviour of some poachers against wildlife in our area and could also help employment.

I am pleased that South Lanarkshire deer management group—

The Deputy Presiding Officer: I have been very generous but I am not overly generous. Please conclude.

Linda Fabiani: We have a deer code for all in Scotland, but it seems that no councils or nature reserves in the central belt are taking a bit of notice. I would like a pilot scheme to be set up specifically for central belt deer management and the central belt deer managers to get the respect that they have deserved for many years.

The Deputy Presiding Officer: I call David Stewart to close for the Labour Party. You have six minutes or thereabouts, Mr Stewart.

15:12

David Stewart (Highlands and Islands) (Lab): Thank you for your generosity, Presiding Officer.

I thank the members of the ECCLR Committee for their input into the report and debate. I also thank those members who spoke who are not members of the committee. It has been an interesting and insightful debate.

There are a number of key issues: how to manage deer; what the landowner's responsibility is; how we measure the effect of deer on the natural environment; the role of the DMGs, local authorities and SNH; and the role of the public interest clause. In the report, those issues have been thoroughly scrutinised, and I acknowledge the work of the environmental NGOs such as Scottish Environment LINK, the forest policy group and the John Muir Trust in giving evidence for it. All the NGOs that I mentioned have welcomed the report, which I appreciate.

Previous efforts at deer management have been largely voluntary. Although some inroads have been made, improvements have plateaued and further action is required. Not tackling the deer issue will have a negative effect on biodiversity, climate change mitigation, peatland restoration and woodland expansion as well as adding to the public costs of coping with the issue through fencing, culling and a mixture of both.

Proper deer management should have a firm impact on environmental issues and would also help to create jobs in fragile rural communities such as those in my region, not only through efforts with the deer on the ground but, as many members have said, through the provision of more larder and abattoir services to deal with an increase in culling, allowing the meat to be processed and distributed throughout Scotland and avoiding a missed opportunity to help the food sector.

As Claudia Beamish said in her speech, evidence shows that our deer can be three times smaller than deer in Norway due to environmental

conditions or competition for food. It is untenable to continue to allow this public resource to be undermanaged and, sometimes, inappropriately managed.

A number of members have referred to the Land Reform (Scotland) Act 2016 and to the fact that, due to an amendment by Claudia Beamish in the previous session of Parliament, the code of practice must be reviewed every three years by SNH.

The convener of the committee opened the debate by saying that it was important to have extensive scrutiny of SNH's report. There are strong views on deer management and, as the convener said, there are also strong views on SNH, and we must recognise that.

The situation with deer management groups is mixed. Some are still lacking action plans while others have clearly done an excellent piece of work. The committee, of which I am a member, wants a short-life working group to be set up. That is a sensible solution in order to get some action and next steps.

Graeme Dey asked about the public objectives when it comes to deer management. He also pointed out what he felt was the inadequacy of the legislation—section 7 agreements and section 8 powers. For example, there has been no use of section 8 by SNH. I have picked up on some fear of legal challenge, but my view as a member of this Parliament for a number of years is that if legislation is not competent, it should be reintroduced to Parliament. Is there a wider reason why SNH is not using that particular section? I would welcome any view that the cabinet secretary might express on that issue in her winding-up speech. The committee has suggested introducing a backstop power, which I think is a sensible way forward.

Clearly, there are issues around data gaps and it would certainly be helpful in that regard if more resources were given to SNH.

On a personal note, I felt—and a number of members agreed with me—that having a clearly external and independent expert peer appraisal would be useful, and I would welcome the cabinet secretary's view on that issue, too.

The convener also raised the issue of assessing the expense to the public purse. Clearly, fencing is extremely expensive. We need to perform a cost benefit analysis of large-scale fencing versus small-scale fencing versus culling versus no action at all. The public spends a lot of money on this issue and we need to know that we are getting good value for money.

The cabinet secretary talked about deer management groups, some of which are clearly

doing a good job. She also raised the issue of deer-vehicle collisions, which a number of other members also mentioned. However, she also made the point that the step change that we require has not been delivered. She made a useful point when she said that, although the Scottish Government will take steps to address concerns, there are not going to be large sums of money to hand out for this issue, particularly in a post-Brexit Scotland.

I apologise to the members I have not been able to mention. This has been an excellent debate. As a member of the committee, I obviously support its recommendations, but it is important to say that this is an important subject in relation to climate change, biodiversity and food miles. We need to take action on this issue. As Claudia Beamish said, we have been sitting on our hands on this issue for many years and it is now time to take action.

I commend the report to Parliament.

15:18

Edward Mountain (Highlands and Islands)

(Con): Before I speak in this debate, I would like to say how much I have enjoyed it. My interest in and enjoyment of this subject is not because I own a deer forest, as some have suggested, although I own a farm with a few roe deer on it, but because I have spent a huge part of my professional life managing deer. I have drawn up deer management plans, including plans for the Cairngorm and Speyside deer management group and other deer management groups, and some of them are still running. In my professional life before I became a politician, I ensured that those plans were implemented on the ground, which is sometimes not an easy task.

This debate has proved to me that, although much can be learned from taking evidence and listening to experts, there is no real substitute for actual experience. That came across during a lot of the evidence sessions that the committee held and which I listened to.

When I read the report, I was pleased that it identified some key and important facts. However, before I consider those, I want to remind members of a simple fact, which is that red deer are an iconic Scottish species and should be treated as such. However, it has become clear to me that some people are fixated by deer management and micromanagement. Two committees in this Parliament have carried out reviews of deer management, two assessments of deer management have been carried out by SNH, one report has been produced by SNH and there have been two further consultancy reports. It all seems like overkill to me. It should be a warning to those

people who are out there managing deer that they need to step up to the plate, because the Parliament is giving the issue scrutiny that some might argue is not truly deserved.

Turning to the report, I want to mention four of the key points that have been highlighted by SNH. First, deer numbers might have increased since 1960, but they peaked in 2000-01 and those increases have stopped. Secondly, cull numbers dropped in 2011-12, due to an actual physical event on the ground—two extremely hard winters when there was a huge amount of natural mortality. One estate that I know lost more than 200 hinds in that winter alone. However, the culls have now returned to the high levels that were achieved in 2004-05. Thirdly, roe deer culling across Scotland has increased by about 30 per cent, with 38,600 animals culled each year. Fourthly, there is a huge economic impact from deer management. It employs 722 people—probably more—and benefits the rural economy by in excess of £15.8 million a year.

As someone who has managed deer, I want to mention five key facts that I think are fundamental, and which have been picked up in the debate. First, deer management is not about numbers. What counts is the impact on the environment, as well as the result of grazing in those environments by other herbivores such as sheep, rabbits and hares. If we are truly to look at habitat management, which is what we should base deer management on, we need to look at the management of all herbivores on hills.

Secondly, I accept that deer management groups have made progress on deer management plans, and although the committee welcomed the collaborative approach, we must recognise that it takes a huge amount of time to move things forward, as Peter Chapman and Emma Harper suggested. From personal experience, I can tell members that drawing up one deer management plan took about three years of my life, and it was about balancing the needs not only of the estates but of the Forestry Commission, SNH and other interested groups, such as the local community.

Thirdly, effective deer management must be responsive. I mentioned the hard winters of 2010 and 2011, when there was huge mortality. Wet spring weather can bring the same effect, and we must ensure that whatever is put in place effectively takes account of events on the ground as they occur, so that we do not get tied into the numbers game.

Fourthly, there were numerous generalisations in the report that I felt were perhaps misleading. For example, there was a comment that deer condition is determined by nutrition and that the fewer deer there are the better their condition will be. That is fundamentally not true. There are other

things that contribute to deer condition, such as parasitic burden, overall health and obviously genetics. Bigger deer do not just appear. We all have to understand that deer across Scotland will be genetically suited to the environment that they are in. Deer on Lewis are naturally smaller than those on the mainland, and parkland deer are naturally bigger than deer on the high hills of the Cairngorms. That is genetics and that is where they come from.

My final key fact is about SNH's suggestion that there should be centralised targets. That concerns me because I have seen it before, when we had the Deer Commission for Scotland, which set centralised targets. We used to go to the deer management group's annual meeting every year and be given targets, but those targets did not necessarily achieve what they were supposed to do. It has also been suggested that there should be an increase in the length of seasons, particularly the stag season. My reason for concern is that that usually means that there are not enough people on hand to carry out the stag stalking season when it needs to be done. I accept fully that deer larders would be helpful, but markets for venison would be helpful, too. We have a limited number of game dealers.

I could go on about other things, but I do not think that I have the time.

The Deputy Presiding Officer: You have another two or three minutes.

Edward Mountain: A working group would be extremely helpful, and engagement with the deer management groups across Scotland would be useful. The loss of the Deer Commission for Scotland, which was absorbed into SNH, was a mistake. If we are going to take deer management seriously, we ought to look at re-establishing the Deer Commission for Scotland with the specialisms that it brought.

We should accept that deer are an important part of our heritage. Also, they are vital to the rural economy, providing income and employment. The debate about deer management should always be about habitat management, not about the number of deer, and we need to ensure that we manage all herbivores that impact on those habitats. Further, we should encourage the formulation of deer management plans through the deer management group process and, if necessary, we should get more deer management groups involved. Finally, responsive and local management is vital when dealing with living animals; centralised and bureaucratic control based purely on numbers is a mistake.

On that basis, this Parliament is advised to encourage deer management groups to work a lot harder on collaborative management that is based

on achieving good habitats around Scotland, rather than spending time and money on trying to centralise and micromanage deer. That is not helpful to the deer or to the habitats that we are trying to protect.

The Deputy Presiding Officer: I call the cabinet secretary—you have seven minutes or thereabouts.

15:26

Roseanna Cunningham: I will do my best to use up the extra time that is available.

The debate has been useful, as I hoped it would be—I mentioned that in my opening speech—in helping us to crystallise our thinking on the important issue of deer management. A lot of valuable points have been made and I would like to make some key points in response.

A number of members have referred to deer numbers and it is worth putting the current estimates on record. We believe that there is a total of between 587,000 and 777,000 deer in Scotland. The annual cull sits at around 100,000, which is about 13 to 17 per cent of the total. It is worth reminding ourselves of the actual numbers when we talk about deer numbers.

The use of current powers was raised by a number of members, the first of whom was Claudia Beamish. Some of the discussion at the Environment, Climate Change and Land Reform Committee questioned whether the current legislative provisions for deer management are adequate and whether SNH has made best use of its powers to secure natural heritage interests. I reassure the Parliament that SNH is determined to move forward decisively to ensure that the control agreements that were established under section 7 of the Deer (Scotland) Act 1996 achieve the desired benefits for the natural heritage. Since publishing its report on deer management, SNH has undertaken a review of the eight existing section 7 control agreements. I have no doubt that, where section 8 orders are required, they will be brought forward.

As part of the Land Reform (Scotland) Act 2016, SNH was given new powers to address deer management. I should be clear that all the new powers have already commenced and that SNH will look to use the powers as part of its duties in deer management. I understand and share the frustration with the pace of change in that area. The temptation is to think that new powers will automatically fix a situation, but further refinement of or addition to the powers that are available to SNH might be required. I have an open mind about that at this stage, but it would be sensible for SNH to try the intervention powers that are available to it through section 8 before we

conclude that the powers are not adequate. The difference between the management of section 7 and moving to section 8 has been the issue.

Mark Ruskell: I hear what the cabinet secretary says about the application of section 8, but we have had those powers since 1959. Does that not tell us something about Government's inability to act on that issue?

Roseanna Cunningham: As I indicated a few minutes ago, SNH is quite clear that it is working very hard on the section 7 agreements and I have no doubt that, when section 8 orders are required, they will be brought forward.

David Stewart: Will the cabinet secretary take an intervention?

Roseanna Cunningham: Can I press on just a little? Otherwise I will completely lose where I am in my speech.

I am cautious about proposals for new powers that might require significant extra SNH or other public sector resources to operate. I must be absolutely blunt about that. We do not have unlimited money to spend on this. As I indicated in my opening speech, I am looking for solutions that take on board the issue and allow us to move forward without a huge burden being placed on the public purse; in many cases, that money would be being spent on deer management that is itself a commercial enterprise. We have skited over that issue a little in the debate, until Edward Mountain got to his feet towards the end. I am grateful that he did that, because there is a tendency to forget that, underlying this area, there are many commercial enterprises. That in itself is an issue about how much the public purse should be expected to step in for private enterprise.

David Stewart: On the section 8 powers, is the legislation totally adequate and not requiring any remedial action, or is SNH having difficulty in getting evidence, so that any action it took would be legally challenged if it went to court?

Roseanna Cunningham: I am going to be diplomatic. I would like to see SNH pushing section 8 before we make a decision about whether it is fit for purpose. If the power has not been tested, it is difficult for us to know that.

I have used up quite a lot of the extra time already, so I will briefly refer to lowland deer, which were mentioned by a number of members including Peter Chapman, Emma Harper and Linda Fabiani. Obviously, MSPs have seen the evidence for themselves. There is a great deal of risk for lowland deer and, indeed, as Linda Fabiani reminded us, peri-urban deer, not least the risk of vehicle collisions, which is a significant issue in many urban areas. I suspect that that might even be an issue for peri-urban deer, but we just have

to accept outright that we are talking about deer in urban areas. Clearly, the deer need management. However, the problems are not the same as those in the uplands, which means that the solutions and the structures are not the same.

The Lowland Deer Network Scotland has made a good start by bringing together those with an interest, mainly recreational deer stalkers. There is no doubt that more needs to be done. That includes involving local authorities, those who manage our highways and railways and other public and private landowners.

SNH recently held an event to share good practice targeted at public bodies and local authorities. The event was well attended. I hope that that will begin to have an impact. As I have indicated, I know of Linda Fabiani's long-standing interest in the issue and that she will continue to push on it.

Those who are interested will want to know that the latest evidence on trends and changes in the occurrence of deer vehicle collisions has just been published.

A number of members, including Peter Chapman, Angus MacDonald and Mark Ruskell, talked about the use of venison and deer larders. I could not agree more with them in that regard. SNH has organised venison butchery master classes, although people might wonder why SNH is doing that. That is an interesting question. Is that really what SNH should be about? It has done that, and members might be happy to know that, over the summer, I will open a new deer larder in Caithness.

Today, I have heard a comprehensive and robust review of the evidence and the SNH report. I welcome the committee's scrutiny and evidence taking on the issue. It is clear that considerable progress has been made, but more needs to be done—and we will look for a redoubling of the efforts from the deer sector and from SNH. We will shortly set out a clear plan of action to focus on the need to build on and maintain momentum and to ensure that land is managed to safeguard public interest.

The Deputy Presiding Officer: I call Maurice Golden to close for the committee. You have eight minutes, or thereabouts.

15:34

Maurice Golden (West Scotland) (Con): It is an honour to close the debate on behalf of the Environment, Climate Change and Land Reform Committee.

The committee welcomes the progress that has been made in deer management in recent years, although it remains a complex issue in which there

are competing objectives within and among deer management groups, and in areas that do not have an established deer management group. We have heard much about that today, and there is strong cross-party consensus with respect to the issues and the mechanisms that should be employed to improve the current situation. Graeme Dey ably outlined the key committee recommendations, and I will echo many of his comments in my remarks. The cabinet secretary stated that “progress has ... been made” but that there is still much to do. We can all welcome the fact that the Scottish Government is in “listening mode”.

On behalf of the committee, I will highlight, as part of my closing remarks, key areas of the report: the environmental impact, a strategic approach to managing deer, the variable performance of deer management planning, the capacity of Scottish Natural Heritage, the development of the wider supply chain and, finally, conclusions on steps forward.

On environmental impacts, although there has been a decline in overall deer numbers in the past 10 years, deer still impact significantly on the natural heritage, so greater focus and urgency are now needed to address the challenges of deer management across Scotland. The Scottish Natural Heritage report to the Scottish Government highlights the fact that 50 per cent of deer management groups have failed to identify in deer management plans actions to deal with deer impacts in designated sites. Habitats take a long time to recover; the committee considers that we do not have time to wait in delivering the Scottish biodiversity strategy. The scale of the action that is needed to address deer impacts on the natural environment is significant.

We need a deer management system that is developed collaboratively and which covers the whole of Scotland, based on clear expression and spatial articulation of the public interest, in particular in relation to biodiversity and climate change. Deer management plans need to take an inclusive habitat approach that focuses on deer densities and impacts at the local level.

We also need to take a strategic approach to managing deer numbers. SNH should be responsible for determining cull levels in the public interest, and deer management groups should carry out deer counts in their areas and return their plans for deer culls to SNH.

Mike Rumbles: Why are 50 per cent of deer management groups not performing those tasks properly? I could not find out from the report.

Maurice Golden: The committee took evidence on that question. Some deer management groups have only recently been established, so it will take

time to deliver their deer management plans. We took evidence that in other groups the appropriate rigour had not been employed to control deer in a manner that we expect for the public interest.

Nevertheless, with regard to the variable performance of deer management planning that Mike Rumbles highlighted, there has been a notable increase in deer management planning across the sector since 2013, but with considerable variation. Some deer management groups have worked to develop deer management plans with the support of the Association of Deer Management Groups and Scottish Natural Heritage, and some DMGs have had substantial and rapid change in their performance. However, progress on the ground, with positive outcomes, cannot be evidenced in all areas. The committee is extremely concerned about the lack of progress in lowland Scotland, in particular. That needs to be addressed as a priority.

The committee is of the view that SNH has not provided the level of leadership in deer management that might have been expected, and that there has been a failure adequately to set expectations for deer management. SNH appears to have been unable, or unwilling, to enforce the legislation to secure the natural heritage interests. The committee recommends that the Scottish Government engage in early discussion with SNH about priorities for delivery; that it review the adequacy of resourcing in the light of the potential additional calls upon SNH and the extension of duties; and that it report back to the committee on the outcome of those discussions.

The committee also recommends that the Scottish Government prepare an action plan for wider supply-chain development for deer carcasses, and that it deliver public funding for the establishment of a network of deer larders across Scotland, including its islands, in order to support greater opportunities for taking part in appropriate culling activity.

Following careful consideration of the SNH report, the committee can see no compelling reason why the interim measures that allow SNH to intervene to amend and lead on drafting deer management plans should not come into effect immediately. That should provide a backstop to ensure that all deer management plans adequately address the public interest. The committee therefore recommends that the powers under section 80 of the Land Reform (Scotland) Act 2016 come into immediate effect and be used as required.

Looking forward, the committee recommends that in order to address some of the issues that have been highlighted the Scottish Government establish, as a matter of urgency, an independent short-term working group to provide clear advice

on the way forward for deer management, and that the group should report back in early autumn 2017. The group should have a very tight remit and should consider the recommendations that are contained within the committee's report. The group should also consider the cost to the public purse, whether there are alternatives to fencing that could deliver the objective, the approach to deer management in the Lowlands, and lessons from management approaches elsewhere in Europe.

The committee believes that the Scottish Government should act on the recommendations in its report with the utmost urgency.

Crofting Law Reform

The Deputy Presiding Officer (Christine Grahame): The next item of business is a debate on motion S5M-05245, in the name of Edward Mountain—you are working hard today, Mr Mountain—on behalf of the Rural Economy and Connectivity Committee, on its report on a review of priorities for crofting law reform. Again, we have some time in hand, so members in the open debate may make speeches of five minutes. Is that not exciting for you?

I call Edward Mountain to speak to and move the motion on behalf of the Rural Economy and Connectivity Committee. Mr Mountain, you have a generous eight minutes.

15:42

Edward Mountain (Highlands and Islands) (Con): For the record, I should say that I work hard every day, Presiding Officer.

The Deputy Presiding Officer: I realised as soon as I had said it that that was rather unkind.

Edward Mountain: As the convener of the Rural Economy and Connectivity Committee, I welcome this debate on the committee's review of priorities for crofting law reform.

I thank all those who gave oral and written evidence to the committee. I also thank the members of the committee for their positive approach, which has resulted in a positive report. Furthermore, I thank our clerking team, who have accurately reflected our deliberations in the report that has been published.

I note the cabinet secretary's written response to the report, and I look forward to his comments on the specific recommendations in the report in due course. I should point out that the committee, in carrying out its review, acknowledged the significant amount of work that has already been undertaken in the area, including previous reforms of crofting legislation, the identification of priorities for further legislative reform by the crofting law group and work by the crofting legislation stakeholder consultation group.

All that work has highlighted the fact that, despite several recent pieces of crofting legislation, there remain a large number of issues within crofting law that need to be addressed. I should also point out that, during the evidence sessions, it became clear to the committee that crofting is not a happy place to be at the moment and that to do nothing or to prevaricate is not an option.

Turning to the report, the first issue on which the committee is clear is that there is a need for a new

and clear crofting policy. From the evidence that we heard, it is clear that Scotland needs a policy for crofting that is fit for the 21st century. The Government and stakeholders need to develop such a policy expeditiously, because only once a policy has been identified can the Government design legislation to achieve that goal. Policy must be delivered by legislation, and not the other way round. Legislation that was designed to protect crofters in the 1800s might not be—and in some cases is probably not—suitable for today.

When it considered crofting policy, the committee heard that a number of issues need to be addressed. The first of those is crofting development. We heard that there has been very little development of crofting under Highlands and Islands Enterprise. Some felt that since the passing of responsibility for the development of crofting to Highlands and Islands Enterprise under the Crofting Reform (Scotland) Act 2010, HIE's focus has been primarily on crofting community development rather than on providing support for individual crofters or promoting wider crofting interests. We heard evidence that the development function should sit with the regulation function in the Crofting Commission. Given the importance of the development function to the future of crofting, we are clear that the Scottish Government must seek further views on where that responsibility should lie.

We also heard a lot about the role of crofting commissioners, which was raised by more than one person; indeed, the very first email that I received when I was elected to the Parliament was on that subject. We heard that there was some confusion about whether elected commissioners were required to act on behalf of the whole commission or whether they were simply delegates representing their constituencies. Concern was expressed about the role of elected commissioners, with one witness—Sir Crispin Agnew—stating that given that the Crofting Commission is part of the regulatory system, it is, in effect, a court with elected judges.

The crofting community has concerns about the role of commissioners, too. We heard that a delegated decision-making process is being developed for the commissioners. That means that the staff of the commission will be tasked with making decisions in individual cases, with the commissioners having a wider overview of policy. As a committee, we feel that a non-executive role for commissioners should be further developed as a priority. It is clear that the future role and responsibilities of elected commissioners should be carefully considered to save internal division and the setting of crofters against one another.

The committee also heard concerns about the crofting register, which was introduced by the

2010 act. The committee feels that the register is important as, when it is complete, it will be a definitive record of all land in crofting tenure in Scotland.

There is concern about the costs involved in registration and, in particular, the costs of meeting public notification requirements via local press advertisements, and the committee believes that there should be a move towards a suitable online solution that would remove the need for costly advertising. It welcomes the fact that the Cabinet Secretary for Rural Economy and Connectivity is prepared to look at that.

The committee also heard that the mapping of common grazings had “ground to a halt” as a result of a lack of funding. It feels that the completion of that important exercise should be prioritised, and it calls on the Scottish Government and the Crofting Commission to consider how that will be achieved and resourced.

The committee took evidence on absenteeism and neglect of crofts, which is a knotty issue. We heard from some witnesses that the process for managing cases of absenteeism under the 2010 act is complicated, time intensive and difficult to implement. That was acknowledged by the cabinet secretary, who said that he is willing to look at it. We believe that it needs to be streamlined.

The committee was surprised to learn that the legal requirement for grazings committees to produce annual reports on matters such as absenteeism and neglect is not being complied with. That is not acceptable, and it raises the question whether the requirement should be enforced or removed.

The committee also heard about the need for new entrants to crofting. If crofting is to flourish, it needs new entrants, and we welcomed the input that we got from the young crofters group. It was clear that there are significant barriers to potential new entrants to crofting. We welcome the Scottish Government's commitment to introduce a new entrants scheme for crofting and the cabinet secretary's agreement to explore the potential for areas of common grazing to be used for the creation of new crofts as part of the development of that scheme.

We also heard about owner-occupied crofts. The issue of how they are to be treated proved interesting. Some said that the owners should be treated as crofters, but others said that they should be taken out of the crofting scheme altogether. Having heard from two different schools of thought as to how owner-occupier crofters should be treated, the committee believes that the issue needs to be examined further.

We also heard about common grazings. The committee heard from several witnesses that, in

some cases, common grazings have been separated from crofting, with common grazings shares in the hands of some who no longer own crofts—slipper crofters, if you will.

We heard that there is a very narrow agricultural context for common grazings under crofting legislation, which might not be fit for purpose. We are in no doubt that the legislation and guidance covering grazings committees need to be updated to reflect modern circumstances in relation to subsidy payments and environmental and renewables opportunities, for example—opportunities that can be grasped to ensure that the income from the grazings goes back into the crofting community.

On the legislative approach, the committee heard loud and clear that the crofting sector is blighted by outdated legislation and policy. We all agree that we must play a part in ensuring that crofting and the crofting community can move forward with confidence towards a successful and sustainable future. The proposed crofting bill and plan for crofting must therefore be comprehensive and address the modern needs of crofting and crofters, and they must deal with all the issues that have been identified. We need to move away from the piecemeal approach of bringing forward, every few years, crofting acts that make limited changes. We believe that the Scottish Government must commit to ensuring that the timetable for the proposed bill allows sufficient time for detailed parliamentary scrutiny and that its passage is completed comfortably before the end of the current parliamentary session.

I look forward to the debate and to hearing responses to the points that the committee has raised.

I move,

That the Parliament notes the Rural Economy and Connectivity Committee's 4th Report, 2017 (Session 5), *Review of Priorities for Crofting Law Reform* (SP Paper 100).

The Deputy Presiding Officer: I call the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing, to open for the Government—a generous six minutes, please.

15:51

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): I start by thanking the committee for considering crofting so early in the parliamentary session and for taking the time to prepare and publish its report.

The Scottish Government supports crofting and the crofting way of life; we do so with policy and financially, and with deeds as well as words. As well as through pillar 1 of the common agricultural

policy, that support comes from a package of measures that includes around £28 million through the less favoured area support scheme for more than 6,400 claims in the crofting counties, and the croft house grant scheme, with £15 million since 2007 helping to build and improve 800 croft homes and £2 million that has been allocated for 2017-18. In that regard, some £948,000 has been shared among 29 crofters so far. Many members—for example, Dr Allan, particularly in relation to his constituency—have lobbied me hard on that.

Other support includes the crofting agricultural grant scheme, with £10 million since 2010 approved for more than 3,550 applications for capital items such as fencing, sheds and drainage; the crofting cattle improvement scheme, with £3 million for a state-of-the-art bull stud, which opened officially in 2013 and has more than 400 beneficiaries each year; the Scottish rural development programme, with £8 million available to help young farmers and crofters set up; veterinary support of £760,000 per annum; and farm advisory support of around £650,000 per annum specifically available to crofters and small farmers in addition to general advice.

Much has changed in crofting law, but it is still based on the Crofters Holdings (Scotland) Act 1886. We shall consider modernisation of crofting law during this parliamentary session, but that will be no easy task. The issues are complex, the opinions are diverse and there are no straightforward answers. Our aim in legislating is to get the best outcomes for crofting, but compromise will be required. The report raises many important issues, but I cannot respond to them individually today. The Scottish Government shall consider the report in detail as part of the legislative development process.

In considering legislation, we must work out what we want crofting to deliver, and I am pleased to note that the committee's report supports that view. We must consider legislation from an open perspective. For example, legislation can take different forms: it could be a tidy-up, it could be a consolidation exercise or it could take a clean-sheet approach. I agree with the committee that matters such as common grazings, owner-occupied crofts, the encouragement of new entrants, crofting regulation and tensions around smallholdings all need to be considered.

However, the committee's report also makes recommendations on non-legislative aspects of crofting policy, and I welcome that. Legislation is not necessarily the best way to make improvements. For example, we have made it clear that we shall engage with crofting stakeholders to undertake the drafting of a national development plan for crofting as part of a sustainable rural economy, and that plan will help

us to identify issues that we do not necessarily require legislation to address—for example, loans for croft houses.

New entrants are crucial. With new blood come new practices, innovation and an enthusiasm that energises the sector. The croft house grant scheme, which has enabled hundreds of young people to establish a house in their own part of Scotland, is a good way to encourage and enable young people to become new entrants to crofting. Work has already begun in the crofting stakeholder forum to identify what a new entrants scheme for crofting might look like. Of course, existing support measures are already available to new entrants.

We also wish to consider woodland crofting. On Friday last week, I had the pleasure of visiting Loch Arkaig, where I had a very useful dialogue about that topic with the local community and the Woodland Trust.

Many will be interested in the timing of any future bill. As previously advised, the decision on the timing of legislation will be taken within the context of the Scottish Government's many legislative priorities. It is important that we take our time to consider what is best for the future of crofting, and it is essential that we get that right. We aim to do so within the current session of Parliament.

The process of creating new legislation should always be an open one. I know from my own experience that the best solutions are arrived at through people working together, in collaboration, after a great deal of thought and discussion. I am grateful for the committee's work in the area and I very much look forward to hearing members' views on the report this afternoon.

The Deputy Presiding Officer: I call Jamie Greene. You have a generous five minutes, Mr Greene.

15:58

Jamie Greene (West Scotland) (Con): Thank you, Presiding Officer. For many months, I have sat on the Rural Economy and Connectivity Committee and have listened to a range of evidence on the future of crofting. Although of the 20,500 crofts in Scotland, only one is in my region, it has become clear to me that the current framework of legislation is not fit for purpose.

The Scottish Conservatives welcome the REC Committee's report—in particular, measures that are set out that would support new entrants to the industry. I am also encouraged that NFU Scotland has welcomed the report. We want an overhaul of the existing framework that not only simplifies the

legislation but addresses what crofting really is in 21st century Scotland.

Crofting has been part of the fabric of Scotland's rural economy and way of life for centuries, and although the economic need for such a localised and self-sustaining way of life has reduced, it is important to preserve that unique way of farming. In my view, however, preservation must also mean modernisation. Successive Governments have tinkered around the edges of the law, but the plethora of legislation that applies to crofting is mind-boggling. Evidence that the committee took on the status quo made it clear that the situation is nothing short of a legal minefield.

If Parliament is serious about developing a long-lasting solution to a century-old debate, we should be bold and we should not be content with any bill that would create more red tape or cause any more confusion. Historically, Administrations have fallen into the trap of topping up legislation in order to fill in gaps. Much has changed in respect of ownership, registration, mediation, common grazings, mapping, financing and the CAP over the years; there is a complicated regulatory environment. There is also a difficult trading environment.

It is a very passionate debate. The very nature of our crofting communities is that they are small, character led, and lack no shortage of points of view and opinions. Whatever those views are, our crofters need to know that the Government and Parliament are on their side. The aim of nurturing and supporting new talent, new entrants and young farmers must be at the heart of what we do.

The committee's report summarises things well. It says:

“there is a need to move away from the piecemeal process of legislative development which has seen several crofting acts being passed in recent years.”

As a Parliament, we have choices ahead relating to consolidation, simplification, modernisation, a new bill and a clean slate. I will not suggest today which of those options is the best course of action: greater minds will deal with that. The point that I want to make is that clear policy and strategy—not legislation—must come first. The debate should be about shaping the future of crofting, not about dealing with the problems of its past. The average age of a crofter is 59. It is absolutely vital that we shape a system and, therefore, legislation around what modern crofting is all about.

The Crofting Commission's Colin Kennedy highlighted that, of the 44 tenancies that have been terminated in the past couple of years, 30 crofts are still lying vacant. Access to finance is one of the main barriers to entry; a person cannot get a mortgage for something that they will not own. Donald MacKinnon of the Scottish Crofting

Federation young crofters group gave testimony on that to us. He stated that access to neglected crofts being eased could attract new entrants and young crofters to the industry. Crofting policy will need to address how we can open up crofting and make it a viable option for new farmers.

As the committee has recommended, we need to address the structure of the Crofting Commission. Sir Crispin Agnew told the committee that the tribunal aspect of the commissioners should be removed. Should commissioners be appointed or elected? Do they represent the interests of their regional constituencies or the interests of the wider cause? Should the commission take back responsibility for crofting development? There are many questions to be answered.

The impetus is now for the Scottish Government to produce a clear set of modern crofting policies. In doing so, it must first and foremost address the outcomes of the sump report. However, legislation is not the only way to address many issues; we should not wait for new legislation before we take action. In the previous parliamentary session, the crofting legislation stakeholder consultation group recommended that nine high-priority issues should be addressed before the end of session 4. Have they been addressed? If not, why not?

In summary, crofting legislation is crying out for simplification, and crofters are crying out for clarification. The groundhog days of piecemeal legislation simply must end. My message is simple: now is not the time for tinkering; now is the time to be bold. If the Scottish Government comes forward with a sensible strategy, the Scottish Conservatives will support it. In the meantime, every day that passes is another missed opportunity to help our crofters.

16:03

Rhoda Grant (Highlands and Islands) (Lab):

Crofting has developed over the years since the first crofting legislation, and it now reflects what is required by each distinct community. In some cases, the croft is simply a house site with a little land for some livestock or vegetable growing; in others, it is a working farm that provides a livelihood for a family.

Governance also differs between areas. In some communities, the grazings committee manages activity and crofters work collaboratively. In other areas, there is little or no collaboration, and the croft is viewed as someone's private land to farm in any way that they wish. Therefore, when we are considering legislation, we should remember that any small change can have dire unintended consequences for people. That is the challenge with new crofting law.

The Scottish Government legislated in 2010 to change crofting law, but it rushed the bill through at the end of a parliamentary session and did not listen to concerns about unintended consequences. As a result, the 2010 act created more problems than it solved. The Scottish Government, to give it its due, has recognised that, and it has announced that it will introduce crofting legislation in the current session of Parliament. However, the Government has not indicated, nor has the cabinet secretary indicated today, what form the new legislation will take.

Will it right the wrongs of the 2010 act and use the sump as a guide to put right the pressing problems that the previous legislation created? The sump is a list of issues that have been put together by crofting lawyers and specialists that highlights the problems with crofting law as it stands. Some of those issues simply require tidying up, whereas others need urgent attention because they are preventing crofters from doing what they need to do to secure their homes and livelihoods.

Will the new legislation simply consolidate the current law in one act while changing nothing? Consolidation has been called for because the original act has been amended many times, and many of the problems arise because the various pieces of legislation do not fit well together.

The third option is to start from basic principles and create a new crofting act, which is what the committee has decided, on balance, to support. However, that is not without its challenges. As I said, crofting has evolved differently among the crofting counties. For the most part, my constituents value their own form of crofting and the way it works in their area.

Different challenges need to be addressed in different areas. For example, some areas are pressured because land values are high and holiday homes are sought after. Crofts have been allowed to fall into disrepair where the croft house has been purchased at a price that was way above the pocket of local people, but the land was not required.

In other areas, work is hard to come by and people have been driven away from their croft to seek a livelihood elsewhere. They have kept their croft and the family home; leaving was not their choice and they long to return. Meanwhile, those crofts are either sublet informally or worked by a cousin or friend, and the house sits empty other than at holiday times. Those are the people who are now being pursued over absenteeism. They feel that they are being unfairly treated—first, because they have been let down by the lack of provision for the local economy, which has forced them out, and secondly, because they are now viewed as a problem for holding on to what they

see as their heritage. In truth, they are unlikely to be able to return until they retire, and at that stage they will probably not want to be large-scale crofters. Surely there is a way to meet their aspirations to return home and to have access to a little land, while allowing the bulk of the croft area to be let to a local person, a new family or a young crofter.

None of that can be dealt with by broad-brush legislation. Every person and every family is different, and each situation will therefore require a personalised solution. The legislation may need to be stripped back to the basics: security of tenure, security of inheritance and a right to buy. In return for all that, the crofter would be expected to work their croft and ensure that it does not fall into disrepair. Localities could be allowed to look at enhancing the legislation with local regulations that would work with the community to tackle particular local issues and to build the economy, thereby leading to greater use of crofting land.

Crofting has been successful in slowing down depopulation in many crofting counties. That is what it was set up to do, and that is what we must protect and enhance. We need to fight depopulation and recognise that people need to be supported to live and work in crofting communities. Crofting alone will not halt depopulation, but it is an economic driver. It is essential that we protect crofting and ensure that the legislation is not a barrier but a driver for repopulation of the crofting counties.

16:09

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Bu mhath leam taing a thoirt dha na clàrcan agus a h-uile duine eile airson dèanamh cinnteach gu bheil na pàirtean as cudromaiche den aithisg anns a' Ghàidhlig, cànan a' mhòr chuid de na sgìrean croitearachd.

For the Anglophones and those who cannot interpret my mispronounced Gaelic, I have just thanked our clerks and others for ensuring that key parts of the report have been rendered in the native language of most of our crofting areas—in Gaelic, in other words.

We should remember that the first act—the Crofters Holdings (Scotland) Act 1886—required that one of the three commissioners could speak Gaelic and, recognising the legal complexities, that one of the commissioners be a Scottish advocate of at least 10 years' standing.

Crofting law is, indeed, a complex area of law that draws on rural agricultural tradition, court cases, and many generations of parliamentary consideration and legislation. It is, to be frank, a pretty substantial guddle. We must not let the complexity and contentious nature of many of the

issues in crofting be another reason for moving forward only by limiting the Government's response to cherry-picking some of the easy bits. The sump report to which Jamie Greene and Rhoda Grant referred at least gives an opportunity for action in areas in which agreement is as complete as it is likely to be.

However, we also need some big-picture stuff. I will start with governance and oversight. My personal hand sits on the matter to an extent, because I was the minister who signed the Crofting Commission (Elections) (Scotland) Regulations 2011. Paragraph 7(5)(a) of schedule 1 to the Crofting Reform (Scotland) Act 2010 proves that we can be radical. It provides for the election to the Crofting Commission of people who are aged 16 or over, and follows a similar provision in the Health Boards (Membership and Elections) (Scotland) Act 2009. We broke new ground in empowering 16 and 17-year-olds in that way. I do not believe that similar has been done in legislation anywhere else in the UK.

The fundamental question is this: what are members of the commission for? They are not there to manage the work of officials but are, absolutely, there to hold them to account and to set policy. In doing so, they are there to represent the collective interests of all crofters and people in crofting communities. It should not be a surprise that responsibility must extend beyond crofters; in fact, one does not even have to be a crofter to stand for election to the commission—albeit that a non-crofter must be nominated by a crofter.

Elected members are there because of votes in the six crofting constituencies, but it is vital that members of the commission reach collective decisions and then take them forward unanimously. It is not useful if members of the commission think that they are there simply to represent the area that elects them. That is a substantial challenge, but I hope that members of the commission will rise to it.

As other members have said, we must complete proper and accurate mapping of crofts and shared grazings. As Minister for Transport, Infrastructure and Climate Change, I was party to a dispute about the boundary between crofting land and Benbecula airport. The diagram in the register of sasines was pretty small and the boundary line was marked with a Chinagraph pencil. When it was scaled up, the line was 100m wide, so we can begin to understand where the dispute came from. It was a recipe for argument.

We have also heard that we must simplify the administration of common grazings and create a better structure, and I support that.

The 1886 act recognised the rights of crofters—it opens on security of tenure—and brought to an

end forced ejection of people from land that they had occupied for generations. It ended the clearances, but life on the croft remains somewhat precarious. I look forward to the Government's planned legislation, and trust that the committee's work will helpfully augment the Government's and others' research.

16:14

John Scott (Ayr) (Con): I declare an interest as a landowner and a farmer, albeit that I have no crofting interests. I welcome this debate on the review of priorities for crofting law reform and note that, in common with many less favoured area farmers, most crofters are struggling to make ends meet in the current financial climate. The recently published net farm income figures are further proof that what historically was a difficult way of life has in recent times become still more difficult and financially unrewarding.

However, I have long held the view that crofting communities are a vital part of Scottish life and culture. Crofters keep communities going where otherwise they would not exist and crofters should be supported wherever possible.

Others have noted at different times that crofting is an island in a sea of legislation. I was a member of the Rural Affairs and Environment Committee in session 3, which helped to create the Crofting Reform (Scotland) Act 2010 seven years ago. I regret to note that the problems that were highlighted in the Rural Economy and Connectivity Committee's recent report are depressingly similar to the ones that were identified almost 10 years ago in the Shucksmith report and more recently in the Scotland's Rural College report of 2014.

I know how much went into the 2010 act and I support the view that, if that act and the subsequent Crofting (Amendment) (Scotland) Act 2013 are regarded as not being fit for purpose, Parliament should endeavour to improve on the legislation. However, I remain to be convinced that a completely new bill is required, as has been suggested. The 2010 act has hardly had time to bed in, never mind to be regarded as not fit for purpose. As Rhoda Grant said, many of the problems that are associated with crofting are about not so much the legislation as the viability of crofting and the commitment to it as a way of life.

Issues of succession and viability remain the biggest threats to the future of crofting, and no amount of legislation will overcome those fundamental and structural problems. The creation of new legislation would not address most of the barriers to entry and occupancy of crofts, which include the cost of purchasing assignments, the lack of knowledge of vacant crofts, the difficulty in obtaining finance to buy assignments, the high

capital cost of establishing enterprises, the cost of returning neglected crofts to use and the lack of financial return from crofting.

However, if the need for change is perceived, the Rural Economy and Connectivity Committee should undertake post-legislative scrutiny of the 2010 act as a precursor to further action. If post-legislative scrutiny of the act finds areas that are universally—I stress the word “universally”—agreed to be needing improvement, consideration should be given to achieving that through secondary legislation, if powers exist in the act to make statutory instruments, or even through clearer guidance, if that is appropriate. Failing that, further amending primary legislation could be considered, but not until it becomes clear that it is absolutely necessary or that it will make a fundamental difference to the problems facing crofting, most of which are not a function of legislation.

Some of the changes under the 2010 act were foreseen as taking perhaps a generation to make a difference and were delivered after much consultation with leading crofting and legal practitioners. Delivering legislation that is agreed on by all is never easy, but amendment of the legislation should be considered if a clear and unequivocal need can be identified and if a consensus can be built around it.

I congratulate the committee and its clerks on the production of the report. Given our Parliament's track record on passing crofting legislation, I am certain that the Government will approach the creation of new legislation with enthusiasm and an open mind, but also with extreme caution, as a huge amount of parliamentary time and resource has been spent on crofting legislation since our Parliament came into existence 18 years ago. I wish the Government and the committee well in whatever they see as the appropriate way forward.

16:19

John Finnie (Highlands and Islands) (Green): As the committee convener said, the Rural Economy and Connectivity Committee took on the review when there was a lot of controversy, particularly about grazing committees, so it was a timely piece of work. It was also a clear signal from the committee of the priority that it places on crofting.

It is important to say that the report is just part of a process, as has been evident from some of the contributions that we have heard. The report said that

“The committee considers ... that the Scottish Government's proposed bill provides ... a legislative

platform which fits with the reality of modern crofting practices”.

That is true but, as we have heard, there is a complex mesh of situations. Crofting epitomises the reality of the challenges that rural communities face. Like many others, I thank the witnesses, who helped us to have an informed debate. As ever, it is better to have the participation of people who will be directly affected, which was helpful.

The report talks about having a sustainable crofting sector. That does not stand in isolation from the future of all our rural communities. There are questions about the role that crofting can and should play in the future of our communities. Depopulation has been mentioned and, although it is primarily Argyll and Bute that is affected by that, each of the affected local authority areas has places where there has been depopulation and where the age profile is such that the community cannot be considered to be stable in the long term.

The report says that the bill should be “relevant to the needs and aspirations of crofters”,

and the cabinet secretary referred to the importance of housing, which is key to everything. I would be surprised if housing was not a significant part, if not the largest part, of the workload of any member of the Parliament. It is key in any community, and there are particular challenges in a rural community.

A press release from the cabinet secretary said that £16 million, rather than £15 million, of grant payments had been made, in addition to the £2 million for the coming year, but anyway, the figure was lots of millions of pounds, which is all welcome. The press release said that that was about

“Attracting people, particularly young families, to our most remote and rural communities”,

which

“is essential for their long-term sustainability.”

That is key to everything and I commend the investment that goes into that.

People have talked about the report’s reference to moving away from a piecemeal approach to legislation. I pose the question: what is the purpose of legislation? It is not to tie us down in endless arguments—and we certainly know about endless legislation on crofting. Legislation is intended to facilitate the delivery of whatever the subject of the legislation is.

The committee’s view is that the proposed bill should be comprehensive. There have been arguments about consolidation versus new legislation, but I think that we all agree that the bill should not be seen as an opportunity to kick the issue into the long grass. The committee has

addressed a number of current issues and, as many people have said, we have been here before with the Shucksmith report.

The committee report says that

“The recommendations contained in ... Sump ... should form the starting point for further consideration of legislative reform proposals.”

It also says that

“the new legislation should be accompanied by comprehensive and accessible guidance documents to allow all of those involved in crofting to more easily understand and implement the provisions.”

I absolutely agree with that, but whether it is lots of legislation and little guidance or modest legislation and lots of guidance, the reality is that crofters do not want reams of paper—they want clarity about the direction. We want that clarity of direction for all our rural communities and, of course, Brexit has to be figured into that, because of the sums of money that come from Europe.

We want sufficient time for scrutiny, because it is important that it is done right but, as a number of members have said, legislation is not needed for everything. We are keen that issues that do not require legislation do not get lost in the process. The cabinet secretary mentioned the national development plan; it is obvious that a longer-term plan is key.

We heard frustrations about the role that HIE plays in crofting development; perhaps there is a misunderstanding. In the chamber, we all talk about the Christie principles of public bodies working together. The responsibility is not necessarily down to any one agency; there has to be collaboration across local authorities, Government agencies and agencies that are directly involved in crofting.

In view of the time, I will leave it there.

16:24

Mike Rumbles (North East Scotland) (LD): I first heard the definition of a croft from Charles Kennedy, who told me that a croft is a piece of land surrounded by legislation. That was perhaps not an original definition, but it described the issue exactly. This is therefore a welcome opportunity to debate the future of crofting in advance of the legislation that we expect from the Scottish Government later in the parliamentary session.

That definition explains why I am in favour of a clean-slate approach to the legislation. John Finnie just spoke about the need for clarity. I hope that the Scottish Government does not decide to add a piece of legislation to the vast amount that already covers crofting. I take it from the evidence that we have heard that it would be far better to

have a clean slate so that we get clarity for the future.

Committee members have worked well together to produce a unanimous report and I hope that the evidence that we have received will help to inform the Scottish Government of the best way to proceed. Everyone on the committee felt—the phrases have been repeated and I make no apology for repeating them—that it was fundamentally important for the proposed bill to fit the reality of modern crofting practices, be relevant to crofters' needs and aspirations and aim to deliver a sustainable crofting sector. If we get that right, it will have dramatic importance for the crofting community.

The committee members all agreed on the need to move away from piecemeal legislative development. The Liberal Democrats believe that the proposed bill should be comprehensive and seek to address all the issues. As the committee made clear in the report, not everything that needs to be reformed requires legislation. The reforms are urgent and the Scottish Government needs to take action as soon as possible.

Many of the issues can be found in the so-called sump report, which is reproduced at page 29 of the committee's report. There is general agreement that the Government needs to tackle those issues directly and relatively quickly. The committee considered many areas that are causing problems or in need of reform. I have a list of them and we could debate each one, but we do not have time to do that.

The first issue is absenteeism and the neglect of crofts. It is heartbreaking to many people to see absentee crofts, which are not used properly.

The second issue is support for new entrants to crofting, particularly in addressing the difficulties of obtaining a mortgage on rented land, which the cabinet secretary mentioned. He would get support from across the chamber if that issue could be addressed reasonably quickly.

Owner-occupied crofts are also an issue. That might sound strange, but the issue is whether they are crofts.

Another issue is common grazings. We found that the law on them is not being upheld. It is interesting to pass legislation but, if we do that, we need to uphold it.

Other issues concern the crofting register and the role of the elected members on the Crofting Commission, which has been mentioned a lot. Edward Mountain mentioned the role of Highlands and Islands Enterprise in crofting development.

We also discussed small landholdings in places other than the crofting counties—Jamie Greene mentioned that he has one in his region—and the

relationship that they may have with crofting. That is important. What is a croft? Is the decision simply down to geographical location?

If we had time, we could debate all those issues, but I realise that I am running out of time. Suffice it to say that the 11 members of the Rural Economy and Connectivity Committee have worked together constructively to produce a report that I hope that the cabinet secretary will take on board. The report is constructive and well thought through. As a result of that work, the cabinet secretary and his civil service team will know exactly where committee members are coming from when, in due course, the committee examines the forthcoming crofting bill.

16:29

John Mason (Glasgow Shettleston) (SNP): Crofting is a key part of Scotland's heritage and it continues to be key in our national use of land. I am new to crofting legislation, which is clearly a complex area, as others have said. However, it is worth saying that many people in the cities and in the Lowlands more generally feel a strong commitment to and a warmth towards crofting, which takes into account the struggles that crofters have faced over the years to achieve many of the rights that they have today.

As Rhoda Grant said, one of the purposes of crofting is to maintain the population in remote rural areas. That is a concern not only for the people of those areas and for Highland Council or Western Isles Council; it is a national concern. Cities are great—I love living in and representing a city—but Scotland cannot consist only of cities. The nation suffers if we do not have a strong and thriving population in the Highlands and Islands.

One of the key questions that the committee faced is whether there should be speedy tidying-up legislation that focuses on the sump report or whether we should recommend moving straight to major consolidation and simplification. Mike Rumbles used words such as “clean slate” and “clarity”, but John Scott disagreed with moving to that approach, at least in the short term.

The committee realised that the kind of legislation that we recommended could be controversial and, at one stage, we thought of sidestepping the issue and not coming to an agreement. However, surprisingly, as we listened to the evidence, we each became independently convinced—and, therefore, convinced as a committee—that we could make one recommendation. It is contained in the second bullet point of the summary, which says:

“The Committee is also of the view that there is a need to move away from the piecemeal process of legislative development which has seen several crofting acts being

passed in recent years. The proposed bill should therefore be comprehensive and seek to address as many of the issues identified ... as is possible."

We disagreed about the word "piecemeal", which Mike Rumbles liked. A previous draft used the word "iterative", which I preferred. However, we will not lose too much sleep over that.

Linked to the question of the type of legislation has been the question of timescale, which has been mentioned. The fifth bullet point in the summary says:

"The Committee calls on the Scottish Government to commit to ensuring that the bill timetable will be structured in a manner which will allow sufficient time for thorough and detailed Parliamentary scrutiny; and that the passage of the bill is completed comfortably before the end of the current parliamentary session."

If I understood the cabinet secretary correctly, he committed to that, which I welcome.

We believe that it should be possible to get a major piece of legislation on crofting through Parliament this session, which means that it should be in place by May 2021 and that it should be well through the process by the summer of 2020, which is not that far away. We do not want to be rushing to deal with a major piece of legislation in the last year of the session, as was the case with the Land Reform (Scotland) Act 2016.

The committee agreed that there needs to be a clear statement on crofting policy. If there is such an overarching policy, it will help to guide us in considering the difficult areas, such as whether owner-occupiers of crofts should be treated in the same way as those who rent are.

We spent time considering common grazings, and points included the need for mapping to be completed. Nowadays, there is a wider range of options for the use of such land, such as wind farms, but the current legislation did not anticipate that when it was written. As a relative newcomer to crofting legislation, I, like others, may struggle to understand why the croft and the related share in the common grazing were ever allowed to be separated from each other.

The committee considered whether responsibility for crofting development should be transferred away from HIE. The jury still seems to be out on that one, but part of me wonders whether crofting, which has such a traditional route to it, fits well with an agency such as HIE, which perhaps emphasises other matters.

I look forward very much to the bill when it comes and to engaging more in the detail of crofting at that time. I re-emphasise that crofting and our remote areas are extremely important to our cities, to Glasgow and to the whole of Scotland.

16:34

Rhoda Grant: This short and useful debate has covered many of the issues that the committee looked at. We all smile when we hear that a croft is defined as a small piece of land surrounded by legislation, but that was proved to us as the committee started to look at the legislation and consider what we were going to do. Crofting needs legislation to protect it, but that legislation can be simple and it can be greatly simplified without damaging crofting. It needs to make sense to crofters and it needs to be easily understood. If we achieve that, we might put some lawyers out of business, but it would be to the benefit of crofting.

Edward Mountain talked about annual reports, and I want to make a point about that. When the 2010 act was going through, many of us were concerned about the reporting functions and the requirement for annual reports that was put on grazings committees, basically making them police their colleagues. The clerk of the grazings committee is elected by the shareholders of the common grazings, and the committee was supposed to report back on the misdemeanours of the shareholders who had elected them to that position. We warned about that and our warning has been borne out, because I do not think that one annual report has been received from a grazings committee. I do not say that something must be done about that; I say that the provision must be removed because it is wrong. We said that it was wrong in the first place and that has proved to be the case, so it needs to go. People should not have to police their neighbours.

John Scott: Will Rhoda Grant take an intervention?

Rhoda Grant: I will.

John Scott: Does Rhoda Grant accept that—

The Deputy Presiding Officer (Linda Fabiani): Excuse me. I call John Scott.

John Scott: Forgive me, Presiding Officer.

Does Rhoda Grant accept that the intention at that time was nothing other than to encourage active crofting, and that that has not yet happened?

The Deputy Presiding Officer: I remind members that, for the purposes of the *Official Report*, we need to say who is about to speak. I call Rhoda Grant.

Rhoda Grant: Thank you, Presiding Officer. John Scott should be aware of that, given his previous role, but he may have forgotten that he should wait until he is announced by the Presiding Officer.

I agree with John Scott. That was the reason for the provision, but the provision has not made that

happen. As has been borne out, we still have crofts that are not worked and we have no way of reporting on them or of encouraging crofters to do that. The point that I was making was that that provision in the legislation has not worked.

A number of speakers have talked about the need for a strategy, and the committee was agreed on that. John Finnie said that a strategy must fit the needs and aspirations of crofters, and that must be its aim. Consultation is needed to ensure that it is right. We need to look at the economics of crofting, as John Scott said. We must discuss the cost of buying and improving land, but also the lack of financial return from crofting. It is a long-standing problem, not just for crofting but for all land-based industries, as we have read in the press lately. We need to look at how land-based industries work economically and ensure that they can provide an income, because I have heard a lot of crofters say that at the moment they are involved in a very expensive hobby, not economic generation. We need to ensure that there is a return on crofting in order to keep people in the glens.

Many speakers have mentioned the development function that went to Highlands and Islands Enterprise, but that was crofting community development. What the Crofting Commission did previously was develop individual crofting businesses and grazings committee businesses, encouraging people to take on different projects to make their crofts more viable. That is the bit that has gone missing and we need to ensure that crofters have business development support.

A number of other issues have been raised. Jamie Greene said that we need an action plan on the sump report and on what needs legislation and what can be dealt with through subordinate legislation or ministerial direction. That would be a good place to start to deal with some of the issues that are coming forward, especially the more urgent ones. The same is true of grazings mapping. Will there be more funding for the Crofting Commission to get that completed? Everyone who spoke to the committee said that it is necessary and needed to be finished. Most crucial is the timing of the legislation. If there is to be new legislation it must be introduced in time to allow us to go out and consult again, rather than passing legislation and hoping for the best.

We must build consensus on the changes that are required. That consensus should include not just those who speak the loudest, but crofters who go quietly about their business, trying to make a living for themselves. We need to bear them in mind.

I thank everybody who contributed to the committee's report.

16:40

Peter Chapman (North East Scotland) (Con):

As a landowner and farmer, I refer members to my entry in the register of members' interests. I welcome the debate, which has been useful, and I am delighted to be speaking in it.

Crofting is not just a vital part of our rural economy, but an important part of Scotland's heritage, particularly in the west of Scotland and the Highlands and Islands. With over 20,000 crofts registered with the Crofting Commission, it is clear that a significant number of crofters will be waiting to see what the Scottish Government does on the matter.

To put it bluntly—this is a personal opinion—we cannot duck the question of serious reform any longer. I have to disagree with my colleague John Scott on that and agree with Mike Rumbles.

Mike Rumbles: Hooray!

Peter Chapman: It does sometimes happen, Mike.

I urge the Scottish Government to come forward with a comprehensive bill to address the maximum number of community concerns in a new, simplified format. In short, we need to start with a clean sheet and draw up simple and clear rules for the governance of crofting that the layman can understand without the need for expensive lawyers to interpret them.

Over the years, there has been amendment after amendment to crofting law that has created only more bureaucracy and confusion. The committee heard Sir Crispin Agnew say:

“The crofting legislation is not fit for purpose because it does not have an underlying policy theme that is appropriate to the present day and age.”—[*Official Report, Rural Economy and Connectivity Committee*, 9 November 2016; c 1.]

I could not agree more and I welcome the cabinet secretary's promise that a new bill will be delivered during this parliamentary session.

There are lots of problems right now. For example, the cost of registration and notification was highlighted by Donald MacKinnon. He said:

“As well as being overly bureaucratic, it represents a huge amount of money coming out of crofting.”—[*Official Report, Rural Economy and Connectivity Committee*, 2 November 2016; c 11.]

Edward Mountain referred to that, too.

As the Rural Economy and Connectivity Committee has set out, we also need to tackle the mapping of the common grazings. That exercise has stopped due to lack of funds and I hope that ministers will give it the high priority and funding that it deserves, as we cannot make progress on crofting without accurate mapping.

We need to consider whether commissioners should be appointed rather than elected, which was brought up during our evidence sessions. There is also the question whether the commission should be responsible for crofting development, rather than HIE. Edward Mountain and John Mason both referred to that as something that we heard about during committee meetings.

We face similar challenges in crofting to those that we face with farming as a whole, namely, a lack of new entrants and a lack of profitability. With crofts tending to be smaller and crofters being more dependent on CAP payments than non-crofters, getting the new legal framework right will be incredibly important in securing a sustainable future for crofting.

Maree Todd (Highlands and Islands) (SNP): In the interests of my constituents in the Highlands and Islands, I ask the member whether he still considers that crofters are “not real farmers”?

The Deputy Presiding Officer: I can allow time for the intervention, Mr Chapman.

Peter Chapman: That was not very appropriate. I accept that crofters do a fantastic job in their own area.

The cabinet secretary outlined in detail some of the excellent grants that crofting areas receive, such as the croft house grant scheme, the bull hire scheme, LFASS moneys and so on.

Donald MacKinnon of the Scottish Crofting Federation young crofters group raised the prospect of allowing increased access to neglected crofts, which would potentially provide opportunities for new entrants and young crofters. Jamie Greene also highlighted that issue. Furthermore, Mr MacKinnon pointed out the opportunities from Brexit. Indeed, with more focus on environmental issues post-Brexit, there could be better ways to support crofting. There is, no doubt, much to be said about such an idea, and I hope that the Scottish Government will look closely at it.

I am in no doubt that we need a clean slate for crofting. That is doubly important as we prepare to leave the European Union. On leaving the CAP, we will have the opportunity to include specific measures to support crofting under our own system. We need to grasp that opportunity with both hands and it is incumbent on every MSP here to help to deliver it to our crofting communities.

16:45

The Minister for Transport and the Islands (Humza Yousaf): I thank the committee and the clerks for producing an excellent report, and committee members for their contributions today.

It has been an excellent, if short debate. Many interesting issues have been raised, and I will touch on them during my speech.

John Mason spoke in the debate. I represent Glasgow Pollok and he represents another Glasgow constituency. As in his area, there is not much by way of crofting in my constituency. It was therefore incredibly important, when I was first appointed as the Minister for Transport and the Islands, that during my islands tour I visited crofts and spoke to crofters to hear about the issues that affect them. Many, if not all, of the issues that they raised have been raised in this debate.

Crofting is so important to the long-term sustainability of many communities, but that is particularly true in the islands, where depopulation is an issue—a topic that Rhoda Grant touched on. The depopulation of our islands particularly affects the Western Isles, although it affects many other island communities, too. There are many reasons for that, including the availability of housing, education, jobs and healthcare, but, undoubtedly, crofting could provide a solution to reverse some of the depopulation.

The debate highlights the importance that we all place on crofting in the Highlands and Islands and our collective desire to make that a success. From the committee’s recommendations and the discussions today, we see that a number of issues need to be tackled and there is no agreement on how to do that. We will, of course, take a consensual approach as we possibly can and we will try to take the Parliament with us once we get to a legislative solution. Importantly, however, the issue is not just about legislation.

On that point about differences of opinion, the debate has helped to demonstrate what the cabinet secretary, members and I have found when we speak to crofters: they have a multitude of opinions on how to tackle these important issues. We have seen that today, to the extent that Peter Chapman disowned his own colleague and agreed with Mike Rumbles. That illustrates the many differences of opinion that there are across the chamber. Some members have asked for a clean-slate approach to new legislation, some have suggested that we should add to existing legislation and others have suggested that we should perhaps tweak existing legislation. We have to take time to consider the options. Importantly, as members have said, we should come forward with the policy intent and the legislation should follow thereafter.

We have heard about the importance of crofting to rural Scotland and the special place that it has for our heritage. Issues such as common grazings, the right to buy, owner occupation, absenteeism, neglect, and future support for crofting are all

important aspects of crofting policy. I will touch on one or two of those aspects.

Support for new entrants was a common theme mentioned by almost every single member. With that new lifeblood come innovation, impetus and energy for the sector. I thank the committee for its recommendations on that area. As members have noted, work has begun in the crofting stakeholder forum to identify what a new entrants scheme might look like. Of course, some grants and other support are already available for new entrants and crofting start-ups.

It is important to note that absenteeism and neglect are two separate issues. The terms are often used synonymously, but it would be wrong for us to do so. Absenteeism and neglect will be looked at in new legislation. Our officials are engaging in great detail with members of the forum and, as members have mentioned, each of those issues is very complex. When we propose solutions, they will, of course, have to be compliant with domestic and, potentially, European legislation as well.

Addressing those issues is not all about new legislation. In parallel to examining the issues that will require new crofting law, we must see what we can do now in relation to current crofting policy, without the need for legislative change. John Finnie's point on that was important: what does not require legislation should not be lost while we firmly focus on what legislative solutions we can bring forward. I will not go through the entire list of all the things that we are doing that are outwith legislation, but it is worth reiterating that we have the croft house grant scheme, the less favoured area scheme that was mentioned by the cabinet secretary, the crofting agricultural grant scheme, the crofting cattle improvement scheme, the Scottish rural development programme, the young farmers start-up grant, the new entrants start-up grant and the crofters and smallholders skill boost 2016. There is also veterinary support available for crofters and support from the farm advisory service. It would be ungenerous to suggest that the Government is not providing support to our crofters, and it should be understood that we are looking at how we can go further.

The questions and issues raised do not come with simple solutions and they will require time. I urge patience and some members have said that they understand that. The committee has said that we should start from a position of a clear, overarching crofting policy, which is an eminently sensible suggestion. I agree that we need clarity on the future of crofting. Work such as that being undertaken by the national development plan for crofting will help us to achieve that.

Stewart Stevenson: There has been little reference to community-owned crofting areas.

Does the minister consider that they continue to be a valuable part of crofting ownership and operation?

Humza Yousaf: The short answer is yes. Some members took a bit of aim at Highlands and Islands Enterprise for not getting involved, but HIE has been instrumental in community land ownership and the point that Mr Stevenson has made.

Rhoda Grant *rose—*

The Deputy Presiding Officer: I am sorry, but there is no more time.

Humza Yousaf: My apologies. I wind up by saying that our engagement with stakeholders will continue—with landowners, NFU Scotland and young crofters. The sump report that almost every member mentioned is a very good report that we will examine in greater detail as we move forward.

From our discussions today, a wide range of action may be undertaken in support of the future of crofting. I look forward to engaging with crofters and crofting communities, the Rural Economy and Connectivity Committee and the Parliament through the legislative process.

The Deputy Presiding Officer: I call Gail Ross to close the debate on behalf of the committee, the name of which I cannot remember off the top of my head—the Rural Economy and Connectivity Committee. Please take us up to 5 o'clock.

16:53

Gail Ross (Caithness, Sutherland and Ross) (SNP): Thank you, Presiding Officer. I will try my best to make sense of all my scribbles.

As the convener stated in his opening remarks, the committee has been working towards the report and subsequent debate for a number of months and has taken evidence from numerous expert witnesses. I record my thanks to them, my fellow committee members, the clerks and the team from the Scottish Parliament information centre. We have spent a great deal of time on a complex and technical area, and the evidence that we have received has helped to inform the report and today's debate.

The report had three main objectives: to inform the activity undertaken by stakeholders in the Scottish Government to work towards the reform of crofting law; to allow the committee to assess the priority action identified so far; and to make any recommendations on action necessary to progress that reform process.

We also note the 57 issues in the crofting law sump, which was published by the crofting law group in 2014; a lot of those issues are priorities for the sector. We stated that those issues should

underpin any future legislation. Many members have mentioned that there are some issues that can be resolved without legislation and that they must be addressed, and those are the ones in the sump report that we talked about. Rhoda Grant suggested that that would be a good place to start.

This has been an interesting and worthwhile, if short, debate on an issue that is of huge significance to our crofting communities and to rural Scotland more generally. The convener, Edward Mountain, started off by suggesting the need for new crofting policy. He is absolutely correct that legislation that was made in the 1800s is probably not relevant to crofting today. Several members—in fact, most of those who spoke in the debate, including Jamie Greene, Rhoda Grant, John Finnie and John Mason—asked the question that the committee asked: do we build on what is already there, or do we start again? I note that there was some division on what we should do.

Emma Harper (South Scotland) (SNP): I am sitting beside Gail Ross and I could probably ask her about this later, but it might be worth getting the matter on the record. In the south-west of Scotland, we have 104 smallholdings, as opposed to crofts. I am curious to know the committee's view on the suggestion that crofting and smallholding legislation should be combined.

Gail Ross: There are very differing opinions on whether the legislation should be combined. The committee took no opinion on that—quite sensibly, I think—and we will leave the matter to wider consultation.

John Scott spoke about the 2010 legislation, which he helped to put together. His opinion is that it needs time to bed in and that there is only a perceived need for change. However, most—if not all—of the witnesses who we spoke to during the evidence sessions were of the opinion that there needs to be some change. We talked about whether we should start with a clean slate or build on what is already there and came to the conclusion that the bill should be comprehensive and that we should try, as far as we can, to start again.

Jamie Greene talked about what crofting is in the 21st century, and Rhoda Grant spoke about the need for a definition. She also spoke about the divisions that exist even within the crofting community about the definition of crofting. I think that it would be a good place to start if we got the definition, decided what we want crofting to do for us in this day and age and moved on from there.

Jamie Greene used the word “mind-boggling” with regard to the legislation. When our committee began the process, I was a bit overwhelmed by the amount of legislation and what it all meant, so it was interesting to take evidence from law

professors who, although they were not confused, agreed that it was a bit of a minefield—Jamie Greene used that word, too.

Jamie Greene spoke about new entrants—as did Mike Rumbles—and their access to mortgages and finance. That is certainly a barrier to new entrants and something that the cabinet secretary has said he will give due consideration to.

Stewart Stevenson gave a fantastic introduction in Gaelic. I was so engrossed that I nearly forgot to take notes. Whereas Jamie Greene used the word “mind-boggling”, Stewart Stevenson said that crofting law is a boorach. I do not think that the committee would disagree with that. He gave us a good insight into the elections to the Crofting Commission and spoke about 16 and 17-year-olds being elected. He also laid out what the role of a crofting commissioner should be.

A few members, including Stewart Stevenson, made points about mapping. It is completely true that the thickness of a line on a map can make all the difference on the ground. We need to make sure that the mapping of common grazings, in particular, is completed.

City boy John Mason talked about land use and said that people in cities were sympathetic towards crofters, given the issue that they face, as did Humza Yousaf. Mr Mason made the valid point that a strong population in the Highlands and Islands benefits the whole of Scotland, which is fantastic. He also touched on the committee's internal debate about what language to use. It is very important that the right words are chosen in such a report.

John Finnie spoke about housing and depopulation and considered the purpose of legislation. Mike Rumbles said that it is all very well for us to pass legislation, but that we must ensure that it is implemented. I think that we would all agree with that. I do not know whether I have managed to cover everyone who spoke; I hope that I have done.

As a committee, we hope that our report and the debate have been helpful in setting the scene for the huge amount of detailed work that lies ahead. We call on the Scottish Government to commit to ensuring that the timetable for the proposed new crofting bill will be structured to ensure that parliamentary scrutiny will be completed comfortably before the end of the current session. We must ensure that there is sufficient time for thorough and detailed parliamentary scrutiny of the bill.

We have a commitment from the Scottish Government to a national development plan for crofting. We must send the message that our crofting communities are valued and that we will support them.

I commend the committee's report to the chamber.

Decision Time

17:01

The Presiding Officer (Ken Macintosh): The first question is, that motion S5M-05351, in the name of Graeme Dey, on the Environment, Climate Change and Land Reform Committee's report on deer management, be agreed to.

Motion agreed to,

That the Parliament notes the Environment, Climate Change and Land Reform Committee's 5th Report, 2017 (Session 5), *Report on Deer Management in Scotland: Report to the Scottish Government from Scottish Natural Heritage 2016* (SP Paper 117).

The Presiding Officer: The second and final question is, that motion S5M-05245, in the name of Edward Mountain, on the Rural Economy and Connectivity Committee's report on a review of priorities for crofting law reform, be agreed to.

Motion agreed to,

That the Parliament notes the Rural Economy and Connectivity Committee's 4th Report, 2017 (Session 5), *Review of Priorities for Crofting Law Reform* (SP Paper 100).

Ship-to-ship Oil Transfers (Cromarty and Moray Firths)

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a members' business debate on motion S5M-04581, in the name of John Finnie, on ship-to-ship oil transfers in the Cromarty and Moray Firths. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the lodging of Public Petition PE01637 regarding at-sea ship-to-ship oil transfers in areas such as the Cromarty and Moray firths; considers the Cromarty and Moray firths to be areas of environmental significance, which are completely unsuitable for operations such as at-sea ship-to-ship oil transfers; further considers that even a minimal spillage would have catastrophic effects for marine life, including the iconic pod of bottlenose dolphins in the Moray Firth, and for coastal communities, threatening the tourism industry, which it believes is the most important employer in the Highlands and Islands; congratulates Cromarty Rising on reaching over 100,000 signatures from people across the region and the world for its petition to the UK Secretary of State for Transport, Chris Grayling; notes the calls for the devolution of powers over licences for at-sea ship-to-ship oil transfers, and further notes the view that any oil transfers that are considered necessary should continue to take place in the relative safety of the Cromarty Port.

17:03

John Finnie (Highlands and Islands) (Green): I thank colleagues for signing the motion, particularly my friend and colleague Claudia Beamish, whose signature ensured that the motion enjoyed cross-party support.

The motion congratulates Cromarty Rising, a number of members of which are in the gallery. It is an outstanding community organisation, as is evidenced by its opposition to the ship-to-ship transfer of oil in the Moray Firth. To my mind, that is real politics. Cromarty Rising has generated more than 100,000 signatures for a petition to the United Kingdom Secretary of State for Transport and has garnered the support of 27 community councils. A number of people are actively involved in the organisation's campaign—I would like to mention my immediate colleagues Anne Thomas and James MacKessack-Leitch—and it has prompted significant interest. The matter is now the subject of a live petition to the Public Petitions Committee.

I also thank all those who sent briefings. We have received lots of information, some of which is highly technical. As I am not a technical person, I will give members just a small bit of information. We are talking about the pumping of 2 tonnes of oil per second between ships. Therefore, any assessment that is based on a maximum spill volume of 1 tonne is not credible in determining

impacts anywhere, least of all in a special area of conservation.

The application that we are talking about was from the Cromarty Firth Port Authority, which is a trust port. I do not fully understand the roles and responsibilities of a trust port, and I have posed a number of questions to the Scottish Government about that. However, we know that trust ports must have regard to the national marine plan and that they must also consult. The CFPA was therefore required to consult beyond the immediate confines of the Cromarty Firth and into the area of the Moray Firth, because the application related to the open sea. However, the CFPA failed spectacularly: it did next to no engagement and 27 community councils opposed the application.

Ship-to-ship transfer of oil has taken place within the confines of the Cromarty Firth for decades, and the motion makes it clear that there is no opposition to that. However, that happens in relative safety, with boats tied to a quay and well-documented back-up. This is a rescheduled debate on the motion; on the day before the debate was originally supposed to take place, I got an email from the CFPA that stated:

"The Port is working with Nigg's owners to bring the terminal back into operation."

That is good news and I hope that it obviates the need to pursue at-sea transfer.

It is important to note that there is no live application at the moment for at-sea transfer and that the previous application was returned undetermined last summer. However, the proposal was for ship-to-ship transfer to take place on the open seas of the Moray Firth, which is a European Union Natura 2000 special area of conservation for bottlenose dolphins; a Moray Firth special protection area for a wide range of seabirds is also proposed.

Roles and responsibilities are very important. This is not a party-political issue and it would be very unfortunate if it became such, but the minister will understand that my immediate colleagues share the Scottish Government's wish to have all decision making on the issue take place in Scotland. At the moment, such decisions are for the Maritime and Coastguard Agency, which is a UK body. Of Scottish bodies, Scottish Natural Heritage is the only statutory consultee, but there is clearly a role for Marine Scotland, as well as for the Scottish Government.

Ministers have repeatedly claimed that the Scottish Government was not formally invited to comment on the CFPA's application. However, the CFPA's agents sent Marine Scotland and others a copy of the application and a letter explaining how and by when they could make representations to

the MCA. The press line subsequently used by the Scottish Government was that it was

“not aware of being directly approached by the UK Government during the consultation.”

That is misleading and disingenuous, minister. The wording appears to have been deliberately chosen so that the statement could be defended as being literally and strictly correct, given that Marine Scotland was not directly approached by the MCA but was approached by the CFPA’s agents and through a letter of formal consultation from the CFPA harbour master. The Scottish Government could and should have brought the serious environmental and non-environmental risks involved to the attention of the MCA. Of course, the Scottish Government must act responsibly within the existing framework for maritime matters, and it has a wider obligation to be a good neighbour.

I asked the cabinet secretary a question about the CFPA’s proposal and

“what assessment of risk to the marine wildlife, including orcas,”

the Scottish Government

“has made of the proposed ship-to-ship transfer in the Moray Firth.”

Roseanna Cunningham replied:

“The Scottish Government has no functions in relation to ship to ship oil transfer licenses. This is a matter reserved to the UK Government, and we continue to press for devolution of these powers to Scotland.”—[*Written Answers*, 3 June 2016; S5W-00285.]

That is most certainly an answer, but it is not an answer to the question that was posed, which is disappointing. Saying “It’s nothing to do with us” is no way for the Government to deal with an important issue. Thousands of people in Scotland and around the world have made their views known to the UK Government, and they have not been contacted by the UK Government. However, the campaigners know that a Scottish Government agency was contacted.

The environment is a devolved matter, so perhaps the minister can outline the responsibilities that he believes that the Scottish Government should have in relation to the issue. I received an email that said:

“The on-going ping-pong between Scottish Ministers and the Secretary of State around the devolved and reserved parameters of this issue detracts from the underlying obligation under the European Habitats Directive. The Scottish and UK Governments should act to prevent such risky activity in such a sensitive location by ensuring proper implementation of the Habitats Directive.”

I share that view.

I welcome what is an apparent change of tone, with the First Minister recently saying that she was

“unconvinced” by the safety of ship-to-ship oil transfer in the Moray Firth.

As the minister will know, we have been here before—in 2007, with transfers in the Forth. My colleague Mark Ruskell will talk about that. At that time, one of Roseanna Cunningham’s predecessors in office said:

“even a scintilla of environmental risk is unacceptable.”—[*Official Report*, 24 May 2007; c 115.]

I hope that the minister will adopt that position now.

The proposal would create no new jobs and it would put at risk marine life of world significance and our most important industry: tourism. On the Moray coast, tourism brings in income of £108 million per annum and employs 2,600 people—one in 10 of the population. As a comparator, perhaps people will reflect on a name that they will know. It took six years to recover from the Braer disaster in Shetland.

There is a comparator that I would like to put to you, minister. Energy is a reserved matter, but everyone knows that there will be no new nuclear power stations in Scotland because the Scottish Government will use the powers that it has under planning legislation to ensure that they do not go ahead. That is the approach that I encourage you to take.

As we have only a short time for this debate, I will move to some final points. I hope, minister, that you will take the opportunity to respond to the various issues that I have raised on behalf of constituents.

Day-to-day operations involving the transfer of crude oil between ships at anchor at this location are highly likely to cause disturbance to bottlenose dolphins and other European protected species. That would equate to an offence under the Conservation (Natural Habitats, &c) Regulations 1994. For any transfer operation to be undertaken legally, an EPS licence would be required under regulation 44. Scottish ministers, in the shape of Marine Scotland, would issue that licence, but it is evident that the tests for that licence could not be met without breaching the EU habitats directive.

I respectfully ask, minister, that you regain the vigour that the Scottish Government had in 2007 when the Forth was at threat. You have the power to stop this now. Please use the existing powers over the environment to evidence and resist any threat to our precious Moray Firth marine wildlife and to our coastal communities and the thousands of jobs that depend on our wildlife. Please confirm that an EPS licence will not be issued and, thereby, prevent ship-to-ship transfers in the Moray Firth. Our marine wildlife and our coastal communities deserve no less.

The Deputy Presiding Officer: I remind all members that during debates—even members' business debates—they should always speak through the chair and not directly to each other.

17:12

Maree Todd (Highlands and Islands) (SNP): First, I apologise to the chamber. I have another engagement this evening, so I will not be able to stay and hear all the speeches in what I am sure will be an excellent debate.

I congratulate my colleague John Finnie on securing this debate on ship-to-ship transfers—a subject that is of such interest to so many of our constituents in the Highlands and Islands. All of us, I am sure, have been contacted by constituents from throughout the region. Communities are concerned about the proposal all the way up the east coast, from Moray up to Tain and in all the parts in between, including Nairn, Inverness, the Black Isle and Invergordon.

The potential environmental impact of the venture presents serious concerns and is at the heart of my constituents' worries about ship-to-ship oil transfers. If the marine environment is damaged as a result of such transfers, local fishing will be harmed and the knock-on effect on tourism in the whole area could be disastrous. Those factors really must be taken into account. On this occasion, the environmentalists are joined in their concerns by many people who live and work in the communities on the coast.

The case against the application has been made by organisations such as Cromarty Rising and local councillors such as Craig Fraser and Liz MacDonald. I cannot be the only politician in the chamber to have received many hundreds of emails and, indeed, personal visits from Craig Fraser. He has done an excellent job in taking the campaign forward on the Black Isle and in the wider area, with support from members of the local communities. I praise them all for their work on the issue.

With regard to the environmental risks, I acknowledge that the chances of something going wrong are small and that, generally speaking, ship-to-ship transfer is a relatively safe process. The issue is that, if something were to go wrong in this particular marine ecosystem, the consequences would be catastrophic.

Many of us cannot understand why ship-to-ship transfer at sea is being proposed at all. Ship-to-ship transfer already happens in the area at Nigg, with the ships tied up at shore. The risks are undoubtedly greater at sea, so why are the communities being asked to take those risks? What would be the benefits?

The firths are already industrialised, which brings millions of pounds to the local economy and supports jobs. We really need that in the Highlands and Islands, and there is little opposition to industrial activity in general in the area.

We all agree that we need to work towards sustainable development, with the contribution of all stakeholders and with marine ecosystems being managed for the benefit of all.

People care passionately about the issue—I see that when I speak about it to people in the Highlands and Islands and the people who have made the long journey down to Edinburgh today to listen to the debate and to demonstrate at the Parliament their opposition to ship-to-ship transfers.

Unfortunately, however, none of us in the chamber has the power to resolve the matter, because it is reserved. Only the UK Government can do that, and its response so far has been extremely disappointing. The process of resolving the issue has taken far too long. As has been mentioned, the Scottish Government does not even need to be consulted on the decision, despite its having responsibility for environmental issues.

John Finnie: Will the member take an intervention?

The Deputy Presiding Officer: I am sorry, Mr Finnie, but we have no time.

Maree Todd: Many of us in the Highlands and Islands believe that the UK Government does not understand the needs of local communities. I support calls to devolve powers in the area. I am glad that the Scottish Government will press the UK Government on the matter, and I hope that the powers are devolved swiftly to ensure that local voices are heard and responded to, and that the transparency that we pride ourselves on in the Parliament can be brought to the matter.

17:16

Edward Mountain (Highlands and Islands) (Con): I refer members to my register of interests, and I thank John Finnie for bringing the debate to Parliament and allowing us to discuss the issue.

Oil transfers have taken place safely in the Cromarty Firth for more than 30 years. Those transfers have been undertaken using the jetty at Nigg. The petition relates to a proposal that has, subsequently, been withdrawn. The petition is based on a Cromarty Firth Port Authority application for ship-to-ship transfers in an area of the Moray Firth over which it has jurisdiction. Having read John Finnie's motion, I am concerned that he has reached a conclusion on ship-to-ship

transfers in the Cromarty Firth Port Authority area without having sight of an actual proposal. I remind members that there is no current proposal, that there is not much chance that there will be one before October 2017 at the earliest, and that it is not a given that there will be one.

With my background in land and fisheries management, I always look at proposals with a careful eye, and my natural reaction—surprisingly—is to be conservative. With that in mind, I always adopt the precautionary principle in relation to matters that might affect the environment. Therefore, my default position in respect of ship-to-ship oil transfers is to question the need for them. I also automatically look for evidence of potential negatives. My research has indicated that there are regular ship-to-ship transfers off Shetland and, indeed, that there have been a significant number of such transfers at Nigg. However, they have taken place, and continue to take place, using ships that are anchored to jetties. Therefore, I have to ask whether it is the secure berth that reduces the risks.

I looked for evidence to support the claim that oil spills are a real danger, but my research indicated that oil spills from ship-to-ship transfers have been rare in the past 10 years. I looked around the whole UK, and it seems that transfers are quite common in some areas. However, it seems also that there have been only three recorded spills in the past 10 years. That evidence suggests that ship-to-ship oil transfers are relatively safe.

John Finnie: Will the member take an intervention?

Edward Mountain: I am sorry, but I am short of time. If I have time towards the end of my speech, I will see whether I can bring in Mr Finnie.

There is one fact that we should all remember about the Forth replacement crossing. As constructed, it gives me huge concerns. If there was an oil spill on it, that oil would all enter the Firth of Forth, because drainage from the bridge is unfiltered and is discharged directly into the firth. However, let me be clear: I understand that there will always be risks, and it is right that we consider whether those risks are acceptable or unacceptable.

I have been told that other regulations are in place to help to prevent oil spillages. For example, the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 were introduced to ensure that ship-to-ship oil transfers are conducted safely. Those regulations gained support from a number of organisations including WWF Scotland, RSPB Scotland and Whale and Dolphin Conservation—to name but a few.

I will turn to the specific application. I remind members that in January 2017 the Maritime and Coastguard Agency asked Cromarty Firth Port Authority to withdraw and resubmit its application. The reason that was given was the lack of evidence on volatile compounds and their potential impact on ecosystems. It was a reasonable and good decision that was based on the precautionary principle. I understand that, since that date, there has been a legal challenge to the existing consent for ship-to-ship transfers at Nigg. I also understand that that consent has been successfully defended by the MCA.

If the CFPA is to submit a new application, I ask that it listens to the local community councils, Cromarty Rising, RSPB Scotland and the dolphinwatch group, and seeks to address their concerns. If the CFPA cannot ensure that those concerns are addressed, it should not resubmit the application.

I do not feel that we have heard sufficient evidence on ship-to-ship transfers. I believe that we, as MSPs, need to wait to hear evidence, once further consultation has taken place; perhaps we can then revisit the debate. Having said that, I make it clear that the current lack of information means that I find the idea of ship-to-ship transfers in the Moray Firth a difficult proposition to support, so I cannot do so.

17:20

Angus MacDonald (Falkirk East) (SNP): I am pleased to contribute to the debate—although members may wonder why an MSP who represents Falkirk East is taking part in a debate on an issue that has arisen 200 miles away. In fact, I have form on the issue. Back in 2006-07, as a councillor representing Grangemouth on Falkirk Council, I, along with others, successfully campaigned to force Forth Ports to reconsider its plans for ship-to-ship oil transfers in the Firth of Forth. At the time, our Scottish National Party-led administration at Falkirk Council was also opposed to the plans, and ship-to-ship transfer became an issue in the 2007 Holyrood election campaign, in which Annabelle Ewing was our SNP candidate. I am thankful that, in the face of significant opposition, Forth Ports saw sense and withdrew its application.

I also have an interest in the issue as deputy convener of the Public Petitions Committee, which is considering a live petition against the current Moray Firth proposal that was submitted by Greg Fullarton on behalf of Cromarty Rising. I appreciate the opportunity to contribute to the debate, and I thank John Finnie for bringing it to the chamber for discussion.

As I said, the issue of ship-to-ship oil transfer first appeared on my radar in 2006-07, when Melbourne Marine Services proposed to introduce such transfers approximately 3.4 nautical miles south-east of Methil, in the Firth of Forth. At that time, the communities on the Forth coastline and the Scottish Parliament took strong stances opposing the oil transfers, given the negative environmental impacts that such transfers would have on marine life in and around the Forth. That strong stance resulted in Melbourne Marine Services aborting its attempt.

Given that earlier success, I encourage colleagues here and in the Scottish Government to take similar action now to ensure that the necessary powers are in place to provide environmental protection for our seas and to protect the tourism industry, and to ensure that there are independent checks and balances on the operation of our trust ports.

My constituency of Falkirk East is home to some of the Firth of Forth's most environmentally sensitive shorelines—around Bo'ness, Grangemouth and Airth. From a constituency point of view, my concern is that should ship-to-ship oil transfers be allowed in the Moray Firth, there is no guarantee that discussions about conducting such transfers in the Forth would not be renewed. Ship-to-ship oil transfers would have extremely negative impacts on the environment in those areas, as we have heard, through their emission of carcinogenic volatile organic compounds and the potential for an oil spill, with the possibility of approximately 2 tonnes of oil being spilled every second. That does not bear thinking about. The negative impacts of transfers could result in catastrophic destruction of local marine life, such as the protected bottlenose dolphins in the Moray Firth.

Additionally, given the geographic layout of the Moray Firth, there is no proper infrastructure for a disaster relief port authority team. However, the site for ship-to-ship oil transfers would be just a kilometre from a rocky coastline. Greg Fullarton referred to that as

“a disaster waiting to happen.”—[*Official Report, Public Petitions Committee*, 16 March 2017; c 29.]

When Cromarty Firth Port Authority submitted an application to the Maritime and Coastguard Agency for a licence for ship-to-ship oil transfers, no strategic environmental assessment was conducted, which means that there has been no consideration of the special protection for birds and bottlenose dolphins in the area where the environment would be negatively affected, if not entirely destroyed, by an oil spillage.

The Scottish Parliament would better be able to protect the environment in those areas if we were given devolved powers over licence applications

for ship-to-ship oil transfers, which we have been requesting since 2014. Instead, the Scottish Government, Marine Scotland and the Scottish Environment Protection Agency are left with only the power to protect the environment to the best of their abilities, in the wake of Westminster's ill-considered decision.

I also urge the Scottish Government to consider implementing independent oversight of Cromarty Firth Port Authority to ensure that the local community and port stakeholders are given better representation and transparency. There is concern out there that trust ports are policing themselves.

As things stand, as I understand the situation, 27 Highlands and Islands community councils, 7 non-governmental organisations and 100,000 community members have signed a petition against ship-to-ship oil transfers in the Moray Firth, but Cromarty Firth Port Authority seems to have paid no attention. I realise that I am running out of time, but it is worth saying that the port authority receives its funding from, and is owned by, private companies—as is highlighted by the fact that it has refused to attend public meetings and has been to only one privately held meeting, at which recording of meeting minutes was not allowed.

As John Finnie said, ship-to-ship oil transfers in the Moray Firth would bring no new jobs to the Cromarty community—they would bring only environmental risks and uncertainty. I urge the Scottish Government not to support the licence application, but instead to take every step that it can take to protect the Moray Firth's marine life. I also urge the Scottish Government once again to request that the UK Government consider devolving to Scotland the relevant powers so that we can control environmental impacts in our own country rather than just react to them.

The Deputy Presiding Officer: I feel as though I am being taken terrible advantage of—thankfully it has been cross-party. Can we try to pull the times back a wee bit?

17:26

Claudia Beamish (South Scotland) (Lab): I thank John Finnie for bringing the issue to the Scottish Parliament and for his informative speech.

Our coastal and marine environments are globally renowned for their dramatic beauty. Marine tourism is an expanding sector. John Finnie highlighted the local facts about that and I want to highlight a few Scotland-wide facts. It is fantastic that Scotland is able to offer a plethora of options, attracting nature lovers, thrill seekers, families and those who simply want to relax. The sector was valued Scotland-wide at £360 million in 2014, which means a huge boon for coastal

communities and economies, especially in the Highlands and Islands. Whatever floats your boat in the marine tourism sector, a clean and diverse marine environment is the lynchpin. Nature-based tourism contributes £127 million per year, but any marine activity would be damaged by a diminished environment, from whatever source.

The Cromarty and Moray Firths are areas of environmental significance. Both play host to a number of protected seabirds such as shags and grebes, and to grey seals and harbour porpoises. A pod of bottlenose dolphins is a favourite for visitors and residents of the Moray Firth. In fact, the two firths are such special places for wildlife that they both fall under a number of environmental protections. Both are designated as EU Natura 2000 special areas of conservation and special protection areas, and the Cromarty Firth is a site of special scientific interest for intertidal mud and sand flats. Research highlights that some of the areas are significant for blue carbon, which the minister and I have been pushing for through the climate change plan.

These unique areas are already under pressure from the effects of our changing climate and other recognised threats to marine ecosystems. The additional risk of ship-to-ship oil transfers needs very careful assessment. Even a small accidental oil spill would have a devastating impact on habitats and it would undo the climate change mitigation progress of blue carbon.

Today's debate is a valuable way of highlighting the range of concerns and some opposing community views. Cromarty Rising has worked hard in defence of the habitats, and the campaign has the support of 27 community councils. The testament of the journey that people have made today also speaks volumes. There is a listening ear as a result of the petition to the UK Secretary of State for Transport, and there is also a petition before our own Parliament.

The community groups feel they have not been consulted, and that questions surrounding the proposal remain unanswered. They highlight the insufficient assessments of the firths' biodiversity, habitats and people in relation to spills, volatile organic compounds and the economic impact. While the licences for the transfers remain reserved, we rely on the Secretary of State for Transport to consider the environmental impacts and not to proceed if there will be adverse impacts.

RSPB Scotland has highlighted to me that in its view, the Cromarty Firth Port Authority's proposal fails to meet the statutory habitats directive tests as there is insufficient information available to enable the decision to be taken and to ensure the integrity of wildlife sites.

I also understand that the port authority argues that it has worked to address issues of concern and that there are concerns from it and from some residents in the locality that the port authority's proposal should be considered in the light of the local economy. However, that does not detract from the fact that the decision, although it is of course reserved, must be fully assessed. It has not been fully assessed yet; under a new application, it must be fully assessed.

John Finnie highlighted—I did not know this until I heard his speech—that the port authority is working with Nigg to see whether there is a possibility of a jetty transfer, which would make much more sense and give better protection. My view is that the application, if resubmitted, would be a risk too far.

The Deputy Presiding Officer: There has been a mixture of members speaking for too long and my forgetting to set the clock for Ms Beamish's speech—

Claudia Beamish: I was trying to check the clock—I thought that it was the slowest minute I have ever had while speaking.

The Deputy Presiding Officer: I apologise for that. I am therefore minded to accept a motion without notice to extend the debate by up to 30 minutes.

Motion moved,

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*John Finnie.*]

Motion agreed to.

17:32

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I thank John Finnie for securing this important debate. I support my constituents on the Black Isle, many of whom are in the public gallery seeking to represent their concerns in opposing ship-to-ship oil transfers in the Moray and Cromarty Firths. This is an area of key significance, with a rich wildlife and marine environment; indeed, it is a European Union designated area for bottlenose dolphins. Villages such as Cromarty—at the end of the road, as it were, on the Black Isle—rely on tourism, particularly ecotourism. Such places draw in visitors and residents alike because of the riches and wealth of the natural environment.

As Maree Todd highlighted, there is one big question at the heart of this debate. Why? Why risk it? Are there really any benefits that are worth the significant risks of allowing ship-to-ship oil transfers in the Moray and Cromarty Firths?

Although I did not don a dolphin costume, I was pleased to join the Cromarty Rising rally outside

Parliament in January, and I was also pleased to support members of the group as they presented their petition on ship-to-ship oil transfers and trust port accountability to the Public Petitions Committee in March. It is clear that this is a complex subject and the expertise among those in Cromarty Rising has really helped to bring that to the fore and raise the profile of the issue. Many legitimate issues have been raised. The Public Petitions Committee has written to the Scottish Government and other relevant stakeholders such as Marine Scotland, and I look forward to reading their responses to the petitioners' pertinent questions. I hope that some answers will be given when the committee picks up the petition again later this month.

It is clear that the initial application did not meet the standards that were expected, and there is no current application. John Finnie has already alluded to it, but there was a mathematical conundrum at the heart of the application. When Briggs Marine—a reputable and respected marine services company—conducted an assessment of a ship-to-ship proposal in another part of Scotland, it stated that the maximum oil spill would be the ship's entire load. For the Moray and Cromarty Firths, we are talking about 180,000 tonnes of crude oil. However, at the stroke of a pen, that figure was reduced to 1 tonne in the application.

That is no doubt partly what prompted the First Minister to say a few months ago that on the basis of the evidence so far,

“the Scottish Government is unconvinced that ship-to-ship oil transfers can, or should, take place”

without causing risk to the environment, particularly to bottlenose dolphins. She added that

“the Scottish Government ... hears”

the concerns of those communities and

“will ... do everything we can to make sure that they are heard by”—[*Official Report*, 12 January 2017; c 17-18.]

the Maritime and Coastguard Agency, while campaigning for the issue to be devolved.

John Finnie: Kate Forbes will be aware of her constituents' concerns about the unexploded munitions that recently washed up at Rosemarkie. I understand that that is the proposed anchorage point, given its naval background. Does she share my concerns and think that that should, at the very least, be part of the assessment, which should be formally carried out by the appropriate people?

Kate Forbes: I understand where John Finnie is coming from and I am aware of those issues. The key is for all the facts to be on the table when those issues are considered—nothing should be sneaked through without proper consultation. That means a formal consultation that asks for the Scottish Government's view on all the issues, in

order that the issues and concerns of local communities are listened to by the Maritime and Coastguard Agency, as Nicola Sturgeon clearly asked for.

I finish with a word of advice to any prospective developers out there, on a principle that can apply equally to other planning applications, be they for projects in the middle of the water or on dry land. As the Member of the Scottish Parliament for Skye, Lochaber and Badenoch, I am passionate about small Highland communities having a voice when it comes to decisions that are taken on their doorsteps. Cromarty Rising has certainly made its voice heard loud and clear. It is incredible that over 100,000 people have signed a petition on the 38 Degrees website, and the number keeps rising. Whatever the issue, and whatever the outcome, developers, planners and decision makers must not neglect to engage with and listen to local communities.

I am not against ship-to-ship oil transfers per se, but they must be in the right place, with the right scientific evidence. On both counts I feel that the application for the Cromarty and Moray Firths has not met the high standards that we should impose on any development in an area of national environmental importance.

17:37

Liam Kerr (North East Scotland) (Con): I thank John Finnie for securing this topical and important debate. On average, 20 ship-to-ship oil transfer operations occur at various places around the world each day. In Scotland, they take place at Scapa Flow in Orkney, Nigg in the Cromarty Firth and Sullom Voe in Shetland and have done so for many years.

The Cromarty Firth Port Authority applied for a licence to do such transfers in five new locations in its harbour area, and a group called Cromarty Rising presented to Chris Grayling a petition that has more than 100,000 signatures from people across the region and the world in opposition to the application. Like others, I welcome the group to the chamber. As the motion—and, just now, Kate Forbes—said, getting so many signatures is an extraordinary achievement.

The motion suggests that the proposed locations are “completely unsuitable” for such operations. That is predicated on an environmental analysis in which something goes wrong. The locations might well be logistically suitable, although I note that the withdrawn proposals showed that the sea was quite shallow at the proposed anchorages, so the suitability for bigger ships, which I presume are the only ones that would make the process viable, is questionable. I also note that there is a war grave

under the proposed site, to which I think John Finnie alluded in his intervention.

Since the 1980s, the Cromarty Firth Port Authority has been involved in the safe handling of oil tankers, and an estimated 250 ship-to-ship oil transfers have been made in its area. That is 175 million barrels of oil equivalent safely transferred into tankers and shipped to global markets. It does not involve new technology or new processes, but it is good for the economy.

However, accidents can occur and we must consider what the impact of any ballast water being discharged and any potential oil spills would be if ships were to collide during transfer. The Braer incident in 1993, which was referred to, and the two Sullom Voe spills in 2009, show that that can happen. Following the Braer incident, a UK Government inquiry made a number of key recommendations that were aimed at improving safety and minimising pollution, the thrust of which was subsequently adopted.

The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 were introduced to ensure that transfers are carefully monitored and well regulated. The regulations were supported by a number of significant NGOs, including RSPB Scotland, Whale and Dolphin Conservation, the Hebridean Whale and Dolphin Trust and the Marine Conservation Society.

Robust operational procedures and mitigation measures are in place to prevent accidental spills during ship-to-ship transfers. They include checking weather conditions, following safety checklists for all equipment, having pre-meetings with all relevant parties to agree a transfer plan, using a qualified STS superintendent to oversee the transfer and using industry-standard certified hoses for the transfer between ships. Only when all procedures have been followed does a transfer take place. In the unlikely event of an oil spill, an oil spill contingency plan that is approved by the MCA is in place, which militates against environmental impact.

According to the International Maritime Organization, ship-to-ship transfers are low risk and can be carried out safely when due regard is paid to the various regulations that are in place. However, the Cromarty Firth and the Moray Firth are beautiful and vital parts of Scotland and I accept the motion's reference to environmental significance. They are home to rare species and habitats and, particularly in relation to tourism, they are an extremely valuable part of the Scottish economy. None of that must be adversely impacted by any actions, including ship-to-ship transfers.

If another licence application is submitted, the views and concerns of stakeholders and local

residents must be valued and communities must be fully consulted. It will be imperative to fully involve the MCA and SEPA so that we strike the right balance between economic growth and job creation for the Highlands and maintaining the highest standards of environmental protection and sustainability.

17:41

Gail Ross (Caithness, Sutherland and Ross) (SNP): I welcome the people in the gallery who have travelled such a long way—including some of my former colleagues from Highland Council—and pay tribute to them and the people watching at home for running a focused and passionate campaign. I thank them for all their correspondence and information. I also thank John Finnie for bringing the debate to the Scottish Parliament.

After so many speakers, I do not need to go into why we are here, because we know that. It has been said that ship-to-ship oil transfers happen every day, perfectly safely, all over the world. We know that and it is not in dispute. However, ship-to-ship oil transfers in an area of such great environmental significance are extremely controversial, and the prospective application has raised concerns among communities on all sides of the Cromarty Firth. That is the focus of the motion.

Oil transfers have been carried out in the Cromarty Firth for a number of years at the relative safety of the Nigg jetty, with ships tied up. Unfortunately, that is no longer feasible, but I, too, got the email to say that the Cromarty Firth Port Authority is exploring that option further, which is to be welcomed.

The difference is that the proposed operation would involve a transfer of crude oil in open waters, with ships at anchor close to the shore, right on the breeding ground of a pod of bottlenose dolphins in an area of significant environmental importance. That area of my constituency holds a hugely valuable ecosystem and I cannot impress enough on members the importance of that environment to the local community and its significance in marine science and to Scotland—not just the local economy—as a tourist destination.

In December, hundreds of people gathered on the beach at Nairn to protest at the plans, and 27 community councils from all around the firth have opposed the proposal. Businesses, residents and organisations have all voiced their concerns about the proposed application and feel that they are not being listened to, despite the port authority insisting that it is listening, consulting and engaging.

The port authority must take on board all the concerns of the community, the RSPB and Whale and Dolphin Conservation. The concerns are not only about an oil spill. The Scottish Wildlife Trust, SNH and SEPA have raised concerns about biosecurity, ballast discharge, the recovery of beached oil and tidal flows. The Association for the Protection of Rural Scotland is also worried about the environment and tourism. All those organisations are concerned about contingency measures and the consequences of spills or fumes, which could harm the area's fragile ecosystem. I do not want cetaceans to be euthanised because of an accidental spill. That would be devastating.

As it stands, we await the new application to see how—or whether—it addresses the concerns of communities. I feel strongly that the port authority and the communities have to work together on the matter. There has to be an appropriate assessment under the European habitats directive—that is a vital part of the application that was lacking the first time round.

A letter that the Department for Transport sent in response to a letter that Kate Forbes and I sent in January clearly states:

“The Scottish Government will be informed of the final decision before it is made public.”

We are debating a reserved matter, and the decision is made by the MCA and the UK Government. I fully support the call for the Scottish Government to have fully devolved powers over all at-sea oil transfer licences, which remain a reserved matter, as I said. We need that power and we need it now.

17:45

Mark Ruskell (Mid Scotland and Fife) (Green): I thank my colleague John Finnie for bringing the topic for debate. It brings back memories from 2006, when we had our first members' business debate about ship-to-ship oil transfers, on a motion in the name of Robin Harper. There are, of course, some differences and similarities between the issues and the members but, at that time, ship-to-ship oil transfers were the biggest environmental threat facing Scotland, with communities on both sides of the Forth rising up against the threat to their environment and their livelihoods.

However, it was not just communities around the Forth that voiced concerns; communities around Scotland—including, ironically, around the Moray Firth—recognised the Forth proposal as a Trojan horse for a surge in oil transfers in open water around our coasts. There was a concern about harbour authorities having deep conflicts of interest between their profit-making desires and

their environmental duties, there was confusion about the fuzzy boundary between Westminster and Holyrood powers, and there was frustration about the lack of action on the part of the then Scottish Executive, when it had clear devolved responsibilities to defend our environment. The question is, what exactly has changed since then? Very little, it seems. The Smith commission failed to resolve the Scottish Parliament's clear devolved powers on the environment with the ones on marine transport, which are reserved, so the fuzzy boundary remains. Further, we still have no planned approach across the British Isles to the question of where—if anywhere—it is appropriate to carry out transfers in open water rather than in the protected confines of a harbour.

Meanwhile, the failure of the Westminster Government to even consult the Scottish Government on the live review of the ship-to-ship oil transfer regulations makes an absolute mockery of the shared governance arrangements that we have. Who knows? Maybe the Secretary of State for Transport took Marine Scotland out of his address book when it failed to respond to the original licence application for the Cromarty transfers in 2015, which was a grave error, in my view.

What is clear is that, under any constitutional settlement that we could think of in this chamber, there has to be a better way to manage our shared seas and the economic opportunities and environmental responsibilities that come with that.

In response to the Forth debacle, in 2007, the fresh Scottish Government, with the then Cabinet Secretary for Rural Affairs, Food and Environment, Richard Lochhead—who I think is not here tonight—amended regulations to ensure that ministers are able to direct competent authorities to assess properly the wide-ranging risks to protected habitats. Some members might remember that law change being much heralded by the Scottish Government at the time. However, now, when I ask a written question on use of those beefed-up powers, the answer is that the Scottish Government cannot use them. In that case, why bring them in in the first place—especially under the argument that the change would be used to get a grip on an ambitious oil-transfer industry? I wonder now what other powers are apparently redundant. Is it the case that the Scottish Government is no longer required, when a dolphin that is protected under EU law is going to be disturbed by oil transfers, to apply sanctions to that? Are we retreating from our hard-won protections for nature?

Many questions are still to be answered, especially around the role of SNH. I wish the Public Petitions Committee well in exploring them, and hope that the current petition will be passed to

the Environment, Climate Change and Land Reform Committee for further forensic examination.

Cromarty Rising and its communities should be applauded. They are Scotland's Standing Rock, and we in Parliament must now rise to their challenge and find a way to protect our environment. If we do not, we will be back at square 1 in this chamber in another decade.

17:49

The Minister for Business, Innovation and Energy (Paul Wheelhouse): I thank John Finnie for bringing the matter of ship-to-ship oil transfers to the chamber, and for providing me with the opportunity to congratulate Cromarty Rising—as he did—on getting more than 100,000 signatures on its petition to the Secretary of State for Transport. That is a significant achievement in its own right, and I agree with members who have highlighted that point.

I take to heart the very real concern of communities who live around the Moray and Cromarty firths over the application from Cromarty Firth Port Authority to undertake ship-to-ship transfers of crude oil at sea in the inner Moray Firth. As a number of members have said, the issue that has raised concerns is not the ship-to-ship transfers themselves but the manner in which it is proposed that they be done, in open water.

As both John Finnie and Kate Forbes stated, the First Minister made our position clear on 12 January: that has not changed. Based on current information, we remain unconvinced that ship-to-ship oil transfers can take place at anchor in the inner Moray Firth without unacceptable risk to the marine environment—in particular, to the special area of conservation for bottlenose dolphins. However, I have to make it absolutely clear that, as a number of members have highlighted, the Scottish Government has no powers over the decision-making process for applications for oil-transfer licences. I will set out some of the background to that.

The regulations under which such applications are considered are currently reserved to the Secretary of State for Transport. As Angus MacDonald said, there were concerns in 2007 about the risk to the environment from a similar plan for the Firth of Forth. At that time, a regulatory regime for ship-to-ship oil transfers was lacking entirely. As a consequence of our action, the UK Government implemented the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010. The introduction of those regulations put in place a process that was designed to ensure that consideration of future applications would be publicly accountable. It also created provisions to

ensure compliance with environmental impact assessment requirements and with the EU habitats directive.

Although we pressed for action and succeeded in getting better regulation of the activity, the UK Government failed to devolve responsibility for Scottish territorial waters to the Scottish Government. To be absolutely clear, I say that the regulations do not currently provide for any formal role for Scottish ministers—even for applications in our own waters. We are not even recognised as a consultation body under regulation 2 of the 2010 regulations.

John Finnie: Would the minister care to comment on my analogy about nuclear power stations? Is he saying that there is absolutely nothing that SEPA, SNH or Marine Scotland can do, and that the marine plan has no relevance to ship-to-ship transfers? Is that the position? If so, it is a dereliction of duty.

Paul Wheelhouse: I take Mr Finnie's point, but when there is planning consent for new nuclear power stations the local authority and the Scottish Government ultimately are the planning authority in such cases. However, the Scottish Government does not have planning powers in relation to ship-to-ship transfers: the MCA does. I want to explain the situation further, which I hope will help Mr Finnie.

As I said, the decision on whether to issue a ship-to-ship oil-transfer licence in Scottish territorial waters is currently reserved to the Secretary of State for Transport, as several members have acknowledged. The Scottish Government will, of course, continue to press the UK Government for devolution of that important function in relation to Scottish waters. Broader consideration of whether the function should be devolved does not resolve the current issue in the Moray Firth, but some things can be done to ensure that the Secretary of State for Transport is held fully to account in the decision-making process.

First, we can insist that the Secretary of State for Transport take full account of the statutory advice that is given by Scottish Natural Heritage, which is the only Scottish body currently that is recognised by the regulations. I am aware that the Scottish Environment Protection Agency has also provided advice, and I hope that that will also be taken into account by the Secretary of State for Transport.

Secondly, we can continue to press the Secretary of State for Transport at the very least to formally invite the Scottish Government to respond to a revised application. That would enable us to provide our view regarding the extent to which

relevant environmental legislation has been complied with.

Thirdly, we can call on the Secretary of State for Transport to listen to the concerns that are raised in the petition, as well as to the heartfelt protests of local people, who are represented here today in the gallery, and who have been making their opposition known here and on the beaches of the Moray Firth.

It has also become apparent that the Secretary of State for Transport has recently undertaken a light-touch review of the regulations. I am sorry to say that, remarkably, given the well-documented interest in such matters on the part of the Scottish Government, the UK Government did not think it necessary to inform or even consult the Scottish Government. Needless to say, we are very disappointed by the mystifying omission by the Secretary of State for Transport and our feelings on the matter have been made absolutely clear to him.

Gail Ross: Can the minister outline whether local authorities have any say in the proposed application?

Paul Wheelhouse: As far as I am aware, SNH is the only formal consultation body in the legislation as it stands, but I am sure that local authorities have expressed views on the proposals. I hope that the secretary of state will take on board the legitimate views of local stakeholders.

With regard to governance of trust ports, which has been mentioned, the trust port model is held in high regard by ministers, the industry and members of this Parliament, and that support was clearly demonstrated through approval of the Aberdeen Harbour Revision Order 2016 and the Harbours (Scotland) Act 2015.

Trust ports are statutory bodies in their own right and their constitution requires them to ensure that harbour facilities are fit for purpose and secured for future generations. There are no shareholders, and any profits that are made must be returned to the harbour for those purposes. Trust ports operate within a commercial and often competitive environment, and it is for their boards to ensure that they operate effectively in that way, and that they comply with the powers that are set out in the legislation.

Although there are no shareholders, there are a wide range of stakeholders and we expect trust ports to take their views into account. Those stakeholders vary from port to port, but they certainly include the port users, the local authority and the local communities.

I have made it clear that the responsibility for that reserved matter rests—regrettably—with the

Secretary of State for Transport, and not with Scottish ministers. However, I assure members that we will continue to make best efforts to ensure that the secretary of state is held to account in the decision-making process, and I suggest that all stakeholders do the same.

I will ensure that any Scottish Government response to a future application highlights the need to comply with environmental legislation and echoes the many concerns that have been raised by members from parties across the chamber, by Scottish Natural Heritage and by the local communities.

I trust that the Secretary of State for Transport will listen and determine the matter for the good of Scotland, its vibrant coastal communities and the precious marine environment on which we all rely. During the debate, members could not have been clearer about the importance of wildlife tourism to local economies, their concerns about Scottish statutory instruments—as set out by Claudia Beamish—and their concerns about potentially creating a precedent for other estuaries around the coast of Scotland, including the Firth of Forth, as was mentioned by my colleague Angus MacDonald.

I hope that the secretary of state listens to the points that have been raised today by members from all parties across the chamber, and thinks very carefully about the application, when it is submitted.

Meeting closed at 17:57.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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